(11)

Supreme Court, U.S.
FILED
SEP 13 2004
OFFICE OF THE CLERK

No. 03-932

IN THE

Supreme Court of the United States

DURA PHARMACEUTICALS, INC.; CAM L. GARNER; JAMES W. NEWMAN; CHARLES W. PRETTYMAN; WALTER F. SPATH; JULIA R. BROWN; JOSEPH C. COOK, JR.; and MITCHELL R. WOODBURY,

Petitioners,

v.

MICHAEL BROUDO; BALDEV S. GILL; LARRY MORGAN IRA; LEONID SHVARTSMAN, (for G&S partnership); NEIL SISKIND; ROBERTA SPECK; BRENT VOGT, on behalf of themselves and all others similarly situated,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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Counsel for Petitioners

* *Counsel of Record*

PETITION FOR CERTIORARI FILED DECEMBER 4, 2003
CERTIORARI GRANTED JUNE 28, 2004

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APPENDIX A — RELEVANT DOCKET ENTRIES OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BROUDO, et al. v. DURA PHARMACEUTICALS, et al.

01-57136

General Docket
US Court of Appeals for the Ninth Circuit
Court of Appeals Docket #: 01-57136
Nsuit: 3850 SEC (Fed)
Broudo, et al v. Dura Pharmaceuticals, et al
Appeal from: Southern District of California (San Diego)

- -

Case type information:
1) civil
2) private
3)

- -

Lower court information:
District: 0974-3 : CV-99-00151-MJL(NLS)
presiding judge: M. James Lorenz, District Judge
court reporter: Jeanette Hill, Court Reporter
Date Filed: 1/27/99
Date order/judgment: 11/6/01
Date NOA filed: 12/4/01

- -

Appendix A

Fee status: paid

- -

Prior cases:
None
Current cases:
None

Docket as of January 12, 2004 11:15 pm

01-57136 Broudo, et al v. Dura Pharmaceuticals, et al

MICHAEL BROUDO
Plaintiff - Appellant

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Henry Rosen
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Alan Schulman, Esq.
(See above)
[COR LD NTC ret]
Blair A. Nicholas
(See above)
[COR LD ret]
Steven J. Toll
(See above)
[COR LD NTC ret]

LARRY MORGAN IRA Plaintiff - Appellant	Eric A. Isaacson (See above) [COR LD ret] Jan M. Adler, Esq. (See above) [COR LD ret] Henry Rosen (See above) [COR LD ret] Joseph D. Daley, Esq. (See above) [COR LD NTC ret] Tor Gronborg (See above) [COR LD ret] William S. Lerach, Esq.

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(See above)
[COR LD NTC ret]
Blair A. Nicholas
(See above)
[COR LD ret]
Steven J. Toll
(See above)
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LEONID SHVARTSMAN,
Plaintiff - Appellant

(for G&S Eric A. Isaacson partnership) (See above)
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Henry Rosen
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Joseph D. Daley, Esq.
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William S. Lerach, Esq.
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Alan Schulman, Esq.
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[COR LD NTC ret]
Blair A. Nicholas
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[COR LD ret]
Steven J. Toll
(See above)
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NEIL SISKIND
Plaintiff - Appellant

Eric A. Isaacson
(See above)
[COR LD ret]
Jan M. Adler, Esq.
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Henry Rosen
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Joseph D. Daley, Esq.
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Appendix A

BRENT VOGT, Plaintiff - Appellant	on behalf of Eric A. Isaacson themselves and all others (See above) similarly situated [COR LD ret] Jan M. Adler, Esq. (See above) [COR LD ret] Henry Rosen (See above) [COR LD ret] Joseph D. Daley, Esq. (See above) [COR LD NTC ret] Tor Gronborg (See above) [COR LD ret] William S. Lerach, Esq. (See above) [COR LD NTC ret] Alan Schulman, Esq. (See above) [COR LD NTC ret] Blair A. Nicholas (See above) [COR LD ret] Steven J. Toll (See above) [COR LD NTC ret]

Appendix A

v.

DURA PHARMACEUTICALS, INC. Defendant - Appellee	William F. Sullivan FAX 858/720-2555 858/720-2500 [COR LD NTC ret] Christopher H. McGrath, Esq. FAX 858/720-2555 858/720-2500 [COR LD NTC ret] PAUL, HASTINGS, JANOFSKY & WALKER LLP 12390 El Camino Real San Diego, CA 92130
CAM L. GARNER Defendant - Appellee	William F. Sullivan (See above) [COR LD NTC ret] Christopher H. McGrath, Esq. (See above) [COR LD NTC ret]
JAMES W. NEWMAN Defendant - Appellee	William F. Sullivan (See above) [COR LD NTC ret] Christopher H. McGrath, Esq. (See above) [COR LD NTC ret]

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CHARLES W. PRETTYMAN Defendant - Appellee	William F. Sullivan (See above) [COR LD NTC ret] Christopher H. McGrath, Esq. (See above) [COR LD NTC ret]
WALTER F. SPATH Defendant - Appellee	William F. Sullivan (See above) [COR LD NTC ret] Christopher H. McGrath, Esq. (See above) [COR LD NTC ret]
JAMES C. BLAIR Defendant - Appellee	William F. Sullivan (See above) [COR LD NTC ret] Christopher H. McGrath, Esq. (See above) [COR LD NTC ret]
JULIA R. BROWN Defendant - Appellee	William F. Sullivan (See above) [COR LD NTC ret] Christopher H. McGrath, Esq. (See above) [COR LD NTC ret]

Appendix A

JOSEPH C, COOK, JR.
Defendant - Appellee

William F. Sullivan
(See above)
[COR LD NTC ret]
Christopher H. McGrath, Esq.
(See above)
[COR LD NTC ret]

MITCHELL R. WOODBURY
Defendant - Appellee

William F. Sullivan
(See above)
[COR LD NTC ret]
Christopher H. McGrath, Esq.
(See above)
[COR LD NTC ret]

MERILL LYNCH AND CO./
MERRILL LYNCH, PIERCE
FENNER AND SMITH, INC.
Defendant - Appellee

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NISSAN MOTOR CO., a Japanese
corporation
Defendant - Appellee

Appendix A

MICHAEL BROUDO; BALDEV S. GILL;
LARRY MORGAN IRA; LEONID
SHVARTSMAN, (for G&S partnership);
NEIL SISKIND; ROBERTA SPECK;
BRENT VOGT, on behalf of themselves
and all others similarly situated
Plaintiffs - Appellants

v.

DURA PHARMACEUTICALS, INC.;
CAM L. GARNER; JAMES W. NEWMAN;
CHARLES W. PRETTYMAN;
WALTER F. SPATH; JAMES C. BLAIR;
JULIA R. BROWN; JOSEPH C, COOK, JR.;
MITCHELL R. WOODBURY;
MERILL LYNCH AND CO./MERRILL LYNCH,
PIERCE FENNER AND SMITH, INC.;
NISSAN MOTOR CO., a Japanese corporation

Defendants - Appellees

Appendix A

4/29/02	Filed original and 15 copies Appellants opening brief (Informal: NO) 39 pages; 5 excerpts of record (1 Exc.vol); served on 4/19/ 02 (minor defcy: (Missing Stmt Rel Cs)) Notified counsel. minor brief deficiency response due 5/13/02; [01-57136] (mhf)
7/3/02	Filed original and 15 copies appellee Dura Pharmaceuticals's 48 pages brief, & 5 copies of Suppl EOC in 2 vol; served on 7/1/ 02 [01-57136] (mhf)
8/5/02	Filed original and 15 copies Michael Broudo reply brief, (Informal: NO) 34 pages; served on 8/1/02 [01-57136] (mhf)
2/4/03	ARGUED AND SUBMITTED TO Harry PREGERSON, Stephen R. REINHARDT, Glenn L. Archer [01-57136] (dr)

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8/5/03	FILED OPINION: REVERSED REMANDED (Terminated on the Merits after Oral Hearing; Reversed; Written, Signed, Published. Harry PREGERSON; Stephen R. REINHARDT; Glenn L. Archer, author.) FILED AND ENTERED JUDGMENT. [01-57136] (mhf)
8/19/03	Filed original and 50 copies Appellees' petition for panel rehearing and petition for rehearing en banc 14 p.pages, served on 8/18/03 (PANEL & ALL ACTIVE JUDGES) [01- (mhf)
9/29/03	Filed order (Harry PREGERSON, Stephen R. REINHARDT, Glenn L. Archer,): The pet for rehearing & the suggestion for rehearing en banc is rejected. [01-57136] (mhf)

APPENDIX B — RELEVANT DOCKET ENTRIES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

U.S. District Court

Southern District of California (San Diego)

CIVIL DOCKET FOR CASE #: 99-CV-151

Broudo, et al v. Dura Pharmaceuticals, et al

Filed: 01/27/99
Assigned to: Judge M. James Lorenz
Referred to: Magistrate Judge William McCurine, Jr.
Demand: $0,000
Nature of Suit: 850
Lead Docket: None
Jurisdiction: Federal Question
Dkt# in other court: None
Cause: 15:78m(a) Securities Exchange Act

MICHAEL BROUDO plaintiff	William S Lerach (619)231-7423 [COR LD NTC] Lerach Coughlin Stoia Geller Rudman and Robbins 401 B Street Suite 1700 San Diego, CA 92101 (619)231-1058

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FAYE WRIGHT plaintiff	William S Lerach (See above) [COR LD NTC]
RONALD L FUTTERMAN, as Trustee for the Futterman & Howard, Chtd. Employee Profit Sharing T[illegible] plaintiff	William S Lerach (See above) [COR LD NTC]
DAVID DANIS plaintiff	William S Lerach (See above) [COR LD NTC]

v.

Appendix B

DURA PHARMACEUTICALS, INC. defendant	William F Sullivan (858)720-2555 [COR LD NTC] Paul Hastings Janofsky and Walker 3579 Valley Centre Drive San Diego, CA 92130 (858)720-2500
CAM L GARNER defendant	William F Sullivan (See above) [COR LD NTC]
JAMES W NEWMAN defendant	William F Sullivan (See above) [COR LD NTC]
CHARLES W PRETTYMAN defendant	William F Sullivan (See above) [COR LD NTC]
WALTER F SPATH defendant	William F Sullivan (See above) [COR LD NTC]
JAMES C BLAIR defendant	William F Sullivan (See above) [COR LD NTC]

Appendix B

JULIA R BROWN defendant	William F Sullivan (See above) [COR LD NTC]
JOSEPH C COOK, JR defendant	William F Sullivan (See above) [COR LD NTC]
MITCHELL R WOODBURY defendant	William F Sullivan (See above) [COR LD NTC]
MERRILL LYNCY AND CO., INC./MERRILL LYNCH, PIERCE FENNER AND SMITH, INC. defendant	J Anthony Sinclitico, III (619)544-8190 [COR LD NTC] Gibson Dunn and Crutcher 4 Park Plaza Irvine, CA 92614-8557 (949)451-3800
NISSAN MOTOR CO., a Japanese Corporation defendant	

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STUART GOLLOMP, On behalf of themselves and all others similarly situated plaintiff	William S Lerach (See above) [COR LD NTC]
JEFF BEDARD, On behalf of themselves and all others similarly situated plaintiff	William S Lerach (See above) [COR LD NTC]
ROBERTA SPECK, On behalf of Herself and All Others Similarly Situated plaintiff	William S Lerach (See above) [COR LD NTC] William F Sullivan (858)720-2555 [COR LD NTC] Paul Hastings Janofsky and Walker 3579 Valley Centre Drive San Diego, CA 92130 (858)720-2500

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MARTHA A DEADRICK, On behalf of herself and all others similarly situated plaintiff	Jeffrey R Krinsk (619)238-5425 [COR LD NTC] Finkelstein and Krinsk 501 West Broadway Suite 1250 San Diego, CA 92101-3593 (619)238-1333

v.

PIERCE FENNER & SMITH, INC
defendant

MICHAEL MARTY plaintiff	Timothy J Burke (310)209-2087 [COR LD NTC] Stull Stull and Brody 10940 Wilshire Boulevard Suite 2300 Los Angeles, CA 90024-3907 (310)209-2468

Appendix B

DOCKET PROCEEDINGS

DATE #	DOCKET ENTRY
1/27/99 1	Complaint Filed; (referred to Magistrate James F. Stiven) Receipt No/Amt of Fee: 45763/$150 (jrl) [Entry date 01/28/99] [3:99cv151]
10/7/99 37	Consolidated and Amended complaint [1-1]; demand jury trial (kjl) [Entry date 10/08/99] [3:99cv151]
11/22/99 39	Notice of Motion and Motion by defendant Mitchell R Woodbury in 3:99-cv-00151, defendant Joseph C Cook Jr in 3:99-cv-00151, defendant Julia R Brown in 3:99-cv-00151, defendant Walter F Spath in 3:99-cv-00151, defendant Charles W Prettyman in 3:99-cv-00151, defendant James W Newman in 3:99-cv-00151, defendant Cam L Garner in

Appendix B

	3:99-cv-00151, defendant Dura Pharmaceuticals in 3:99-cv-00151 to dismiss consolidated and amended cmp pursuant to FRCP 9(b) and 12(b)(6) [motion(s) referred to Judge M. J. Lorenz]; motion hrg set for 2/28/00 at 10:00 am (meg) [Entry date 11/23/99] [3:99cv151]
11/22/99 40	Memorandum of points and authorities by defendant Mitchell R Woodbury in 3:99-cv-00151, defendant Joseph C Cook Jr in 3:99-cv-00151, defendant Julia R Brown in 3:99-cv-00151, defendant Walter F Spath in 3:99-cv-00151, defendant Charles W Prettyman in 3:99-cv-00151, defendant James W Newman in 3:99-cv-00151, defendant Cam L Garner in 3:99-cv-00151, defendant Dura Pharmaceuticals in 3:99-cv-00151 in support of

	motion to dismiss consolidated and amended cmp pursuant to FRCP 9(b) and 12(b)(6) [39-1] (meg) [Entry date 11/23/99] [3:99cv151]
11/22/99 43	Request for Judicial Notice by defendant Mitchell R Woodbury in 3:99-cv-00151, defendant Joseph C Cook Jr in 3:99-cv-00151, defendant Julia R Brown in 3:99-cv-00151, defendant Walter F Spath in 3:99-cv-00151, defendant Charles W Prettyman in 3:99-cv-00151, defendant James W Newman in 3:99-cv-00151, defendant Cam L Garner in 3:99-cv-00151, defendant Dura Pharmaceuticals in 3:99-cv-00151 motion to dismiss consolidated and amended cmp pursuant to FRCP 9(b) and 12(b)(6) [39-1] (meg) [Entry date 11/23/99] [3:99cv151]

2/18/00 52	Opposition by plaintiff David Danis in 3:99-cv-00151, plaintiff Ronald L Futterman in 3:99-cv-00151, plaintiff Michael Broudo in 3:99-cv-00151, plaintiff Stuart Gollomp in 3:99-cv-00151, plaintiff Jeff Bedard in 3:99-cv-00151, plaintiff Roberta Speck in 3:99-cv-00151, plaintiff Pelican Financial in 3:99-cv-00151, plaintiff Martha A Deadrick in 3:99-cv-00151, plaintiff Scott Rothstein in 3:99-cv-00151, plaintiff Faye Wright in 3:99-cv-00151, plaintiff Robert Johnson in 3:99-cv-00151 to motion to dismiss consolidated and amended cmp pursuant to FRCP 9(b) and 12(b)(6) [39-1] (jrl) [Entry date 02/18/00] [3:99cv151]

Appendix B

3/24/00 57	Reply by defendant Mitchell R Woodbury in 3:99-cv-00151, defendant Joseph C Cook Jr in 3:99-cv-00151, defendant Julia R Brown in 3:99-cv-00151, defendant Walter F Spath in 3:99-cv-00151, defendant Charles W Prettyman in 3:99-cv-00151, defendant James W Newman in 3:99-cv-00151 to opposition to motion to dismiss consolidated and amended cmp pursuant to FRCP 9(b) and 12(b)(6) [39-1] (meg) [Entry date 03/27/00] [3:99cv151]
7/12/00 68	Order by Judge M. J. Lorenz granting motion to dismiss consolidated and amended cmp pursuant to FRCP 9(b) and 12(b)(6) [39-1] without prejudice. Plas shall file and serve an amd cmp w/in 60 days of the date of this order is stamped filed. (meg) [Entry date 07/13/00] [3:99cv151]

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9/25/00 72	Second consolidated amended complaint [37-1]; demand for jury trial (meg) [Entry date 09/26/00] [3:99cv151]
11/22/00 75	Notice of Motion and Motion by defendant Dura Pharmaceuticals in 3:99-cv-00151, defendant Cam L Garner in 3:99-cv-00151, defendant James W Newman in 3:99-cv-00151, defendant Charles W Prettyman in 3:99-cv-00151, defendant Walter F Spath in 3:99-cv-00151, defendant Mitchell R Woodbury in 3:99-cv-00151, defendant Joseph C Cook Jr in 3:99-cv-00151, defendant Julia R Brown in 3:99-cv-00151 to dismiss plas' second consolidated and amended cmp pursuant to 12(b)(6), 9(b); [motion(s) referred to Judge M. J. Lorenz] motion hrg set for 3/12/01 at 10:30 (vls) [Entry date 11/24/00] [3:99cv151]

Appendix B

11/22/00 76	Memorandum of points and authorities by defendant Mitchell R Woodbury in 3:99-cv-00151, defendant Joseph C Cook Jr in 3:99-cv-00151, defendant Julia R Brown in 3:99-cv-00151, defendant Walter F Spath in 3:99-cv-00151, defendant Charles W Prettyman in 3:99-cv-00151, defendant James W Newman in 3:99-cv-00151, defendant Cam L Garner in 3:99-cv-00151, defendant Dura Pharmaceuticals in 3:99-cv-00151 in support of motion to dismiss plas' second consolidated and amended cmp pursuant to 12(b)(6), 9(b); [75-1] (vls) [Entry date 11/24/00] [3:99cv151]

Appendix B

11/22/00 79	Request for Judicial Notice by defendant Mitchell R Woodbury in 3:99-cv-00151, defendant Joseph C Cook Jr in 3:99-cv-00151, defendant Julia R Brown in 3:99-cv-00151, defendant Walter F Spath in 3:99-cv-00151, defendant Charles W Prettyman in 3:99-cv-00151, defendant James W Newman in 3:99-cv-00151, defendant Cam L Garner in 3:99-cv-00151, defendant Dura Pharmaceuticals in 3:99-cv-00151 motion to dismiss plas' second consolidated and amended cmp pursuant to 12(b)(6), 9(b); [75-1] (vls) [Entry date 11/24/00] [3:99cv151]
2/2/01 83	Memo of points and authorities in Opposition by plaintiffs in 3:99-cv-00151 to motion to dismiss plas' second consolidated and amended cmp pursuant to 12(b)(6), 9(b); [75-1] (meg) [Entry date 02/02/01] [Edit date 02/02/01] [3:99cv151]

Appendix B

2/20/01	84	Reply by defendant Mitchell R Woodbury in 3:99-cv-00151, defendant Joseph C Cook Jr in 3:99-cv-00151, defendant Julia R Brown in 3:99-cv-00151, defendant Walter F Spath in 3:99-cv-00151, defendant Charles W Prettyman in 3:99-cv-00151, defendant James W Newman in 3:99-cv-00151, defendant Cam L Garner in 3:99-cv-00151, defendant Dura Pharmaceuticals in 3:99-cv-00151 to opposition to motion to dismiss plas' second consolidated and amended cmp pursuant to 12(b)(6), 9(b); [75-1] (meg) [Entry date 02/21/01] [3:99cv151]
11/5/01	95	Order by Judge M. J. Lorenz granting motion to dismiss plas' second consolidated and amended cmp pursuant to 12(b)(6), 9(b); [75-1]. Second consolildated and amended complaint is dismissed with prejudice. Dfts request for judicial

Appendix B

		notice is granted insofar as the court has relied on those documents. The clerk of the court is directed to enter judgment in this action, and the judgment shall apply to all matters that have been consolidated to the instant master file, in re Dura Securities Litigation 99cv151 L(NLS). (copy of order in member cases) (meg) [Entry date 11/06/01] [Edit date 11/06/01] [3:99cv151]
11/6/01	96	Clerks Judgment: court grants defendant's motion to dismiss plaintiffs' second consolidated and amended complaint. Second consolildated and amended complaint is dismissed with prejudice. Defendants' request for judicial notice is granted insofar as the court has relied on those documents. The clerk of the court is directed to enter judgment in this action, and the judgment shall apply to all matters

	that have been consolidated to the instant master file, in re Dura Securities Litigation 99cv151 L(NLS). terminating case (meg) [Entry date 11/06/01] [3:99cv151]
12/04/01 97	Notice of appeal by plaintiff Michael Broudo in 3:99-cv-00151, plaintiff Roberta Speck in 3:99-cv-00151, from Dist. Court decision entered on 11/6/01. Receipt No/Amt of Fee: #077354, $105 [96-2]; t/w civil appeals docketing stmt and representation stmt (other plaintiffs listed in appeal not a party to this case) (aps) [Entry date 12/04/01] [3:99cv151]
1/14/02 —	Reporter's Transcript of proceedings for the following date(s) : 4/24/00 (Re: [97-1]) (andy) [Entry date 01/14/02]

1/14/02 —	Reporter's Transcript of proceedings for the following date(s): 3/26/01 (Re: [97-1]) (andy) [Entry date 01/14/02] [3:99cv151]
11/17/03 108	Certified copy of judgment from USCA reversing and remanding the Decision of the District Court re appeal [97-1] (apb) [Entry date 11/19/03] [3:99cv151]

APPENDIX C — SECOND CONSOLIDATED AMENDED COMPLAINT FOR VIOLATION OF THE SECURITIES EXCHANGE ACT OF 1934 DATED SEPTEMBER 23, 2000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Master File No. 99cv0151-L(NLS)

CLASS ACTION

In re DURA PHARMACEUTICALS, INC. SECURITIES LITIGATION

This Document Relates To:

ALL ACTIONS.

SECOND CONSOLIDATED AMENDED COMPLAINT FOR VIOLATION OF THE SECURITIES EXCHANGE ACT OF 1934

DEMAND FOR JURY TRIAL

THE FRAUDULENT SCHEME

1. Plaintiffs bring this action on behalf of purchasers of Dura Pharmaceuticals, Inc. ("Dura" or the "Company") securities between 4/15/97 and 2/24/98 (the "Class Period"). Dura became a publicly traded company in 1992, pursuing a business strategy of marketing niche pharmaceutical drugs. Typically Dura purchased the rights to market drugs developed by large pharmaceutical companies that were

approaching the end of their profitability to those companies. Dura did not have the resources or capability to develop drugs on its own. By 1995, however, it became obvious to Dura's management that, given the Company's size, it would be increasingly difficult to achieve continued revenue and EPS growth solely by acquiring marketing rights to niche drugs. Therefore, Dura insiders decided to embark on a risky and expensive diversification of its business, attempting to become a medical device development company and develop its own proprietary drug products.

2. In 1995, Dura began development of the Spiros drug delivery system for Albuterol ("Albuterol Spiros" or "Spiros drug delivery system"), a method of aerosolizing powders so that asthma medicines, including Albuterol, could be inhaled. According to Dura, its Spiros drug delivery system would be utilized first to deliver Albuterol and later other medications to persons with respiratory problems such as asthma. The system purportedly would have advantages over existing inhalers which were dependent upon the ability of the user to successfully coordinate the use of the inhaler and inhalation of the medication, something some persons with respiratory distress (such as children) had difficulty doing. The Spiros drug delivery system supposedly utilized a mechanically driven dosing mechanism that provided uniform dosing regardless of the ability of the patient to coordinate the operation of the inhaler.

3. The Spiros drug delivery system was a software-driven device with software programmed to turn on a motor that activated an impeller inside the device. The impeller extracted the Albuterol drug compound from the storage

cassette that fit inside the inhaler. The storage cassette contained 30 separate wells that each contained one dose of Albuterol dry power compound. Each time the inhaler opened and closed, one dose was released and the cassette advanced to the next well. With the software, the inhaler was programmed to allow the inhaler to dispense 1500 doses, which was considered the optimal dose lifetime for each inhaler.

4. The millions of dollars of necessary research and development costs associated with developing, testing and obtaining approval for the Spiros drug delivery system had to be immediately expensed as a charge against current earnings under GAAP. To avoid such a huge negative impact on its earnings, Dura's management created Spiros Development Corp. ("Spiros I") to incur Dura's costs of developing the Spiros drug delivery system. Dura performed the development work under contract to Spiros I and billed the expenses to Spiros I, plus a mark-up of 15% to 25%. Through this "off balance sheet" arrangement with Spiros I, Dura recorded revenue and profits on the "expenses" it incurred for research and development of the Spiros drug delivery system.

5. Although this arrangement protected Dura's positive financial results, it exacerbated the pressure on Dura's insiders to keep Dura's stock at high levels. Dura ultimately would have to use its stock to repurchase Spiros I when Spiros I ran out of funds. Spiros I had been funded in 12/95 through a $28 million private placement and $13 million from Dura. To induce investors to finance Spiros I, they were given warrants to purchase 2.2 million shares of Dura at $19.47 and Dura reserved the right to re-purchase Spiros I.

6. By 1997, the pressure on Dura's insiders to maintain a high stock price intensified. After reaching an all-time high of $47-7/8 on 12/31/96, Dura's stock declined sharply, falling to $27-7/8 on 4/14/97, due to concerns over the ability of Dura's existing drug lines to continue to drive Dura's EPS growth and the ability of Dura to successfully introduce the Spiros drug delivery system by late 1998 or early 1999. This decline created a dilemma for Dura's executives. The perception of weakness in Dura's drug sales was well-founded, as is described below.

7. More troubling for Dura executives were the significant problems plaguing the development of the Spiros drug delivery system since the fall of 1996. Because Dura executives desperately wanted to transform Dura to a drug device development company, they made the strategic decision to proceed to clinical trials in the fall of 1996 for the Spiros drug delivery system despite the fact that the system was merely a prototype that had not yet undergone sufficient development. Dura's executives, including defendants, put tremendous pressure on Dura's engineering department to develop a prototype. Although Dura's Product Development Department designed and manufactured the Spiros drug delivery system prototype and the Albuterol cassette very fast and this prototype performed well for a prototype, Dura executives decided to proceed to Phase III clinical trials even though the Spiros drug delivery system was not reliable and the Albuterol cassette system was not stable.

8. In fact, Dura's top executives ignored the recommendations of Dura's engineers to not proceed with

Phase III clinical trials and not proceed to file a New Drug Application ("NDA") until these problems were remedied. In 10/96, in an internal Dura engineering report, Robert Eisele, Dura's Vice President of Product Development, included a list of problems with the Spiros drug delivery system and the Albuterol cassette. This list of problems, five to six pages long, compiled by Eisele who was the lead project manager on Albuterol Spiros, detailed items Dura's engineers considered critical before an NDA could be submitted. The "Eisele List" was distributed to senior management at Dura during the weekly executive management meeting held every Monday from 8:00-10:00 a.m., and attended by defendant Cam Garner, Dura's President, Chief Executive and Operating Officer and Chairman, defendant James Newman, Dura's Chief Financial Officer and Senior Vice President of Finance and Administration, defendant Charles W. Prettyman, Senior Vice President of Development and Regulatory Affairs, defendant Walter Spath, Senior Vice President of Sales and Marketing, defendant Julia R. Brown, Senior Vice President of Business Development and Planning, defendant Mitchell Woodbury, Senior Vice President and General Counsel to Dura, David Kabakoff, Chief Executive Officer of Spiros Development Corp., Robert Schultz, Senior Vice President of Product Development, Robert Eisele, Malcolm Hill, Vice President of Clinical Development and Chet Damecki, Vice President of Operations.

9. One big problem with the Spiros drug delivery system set forth in the Eisele List was its reliability. Because it was a mere prototype, the delivery system was incapable of consistently delivering the required dose, was insufficiently

robust in that it could not withstand normal use conditions, and was subject to an unacceptable rate of failure. Another huge problem with the device set forth in the Eisele List was the stability of the Albuterol cassette system. In the cassette system, doses of Albuterol were stored in a vacuum-sealed foil pouch ready for insertion into the Spiros delivery device. After removal from the foil pouch, it was unknown how long Albuterol would remain chemically stable under realistic use conditions. For example, because a patient might use the device erratically or under varying temperature and humidity conditions, the Albuterol would have to remain stable.

10. Because Albuterol stability was so important, before Phase III clinical trials began, Dura devised in-house testing. Respirable dose amounts of Albuterol were subject to aging experiments at certain temperatures and humidity levels – 25 degrees centigrade and 75 percent relative humidity – for fixed periods of time according to industry testing procedures and FDA requirements. Following the temperature – humidity aging process, the sample dose was dispensed from the Spiros delivery device into a filter designed to simulate a human lung. FDA guidelines set forth standards regarding acceptable levels of reduced drug efficacy and changes in particle size not to exceed 10% in the specified time frame. Dura's in-house aging tests showed unacceptable levels of reduced efficacy. Basically, as the drug aged at fixed temperatures and humidity, the Albuterol particles clumped together allowing less to be absorbed into a patient's lungs. Senior management was kept apprised that Albuterol failed Dura's in-house aging tests via chemical stability test results and analytical reports that were circulated during weekly product development meetings. Albuterol chemical stability issues

were also described in detail in minutes generated from the product development meetings and circulated to senior management.

11. By the time Dura commenced Phase III clinical trials for the Spiros delivery device with Albuterol, defendants were aware that the device had serious reliability and Albuterol stability problems that Dura's own engineering department recommended be remedied before commencing clinical trials. Defendants, however, who had predominately sales and marketing and not scientific backgrounds, decided to pursue Phase III clinical trials, over the objections of Dura's own engineers, without an adequate scientific basis because they were desperate to transform Dura into a drug development company.

12. Not surprisingly, serious reliability problems manifested themselves during the Phase III clinical trials. To ensure the Spiros device's reliability, during clinical trials the Spiros device was subjected to "benign abuse conditions" designed to test the device's reliability under ordinary types of abuse conditions. One example is dropping the device from various heights. During clinical trials, Dura experienced an over 30% failure rate of the devices. Because of this high failure rate, Dura experienced an extremely high early return rate, which measures the number of inhalers removed from the clinical studies before the 1500 dose lifetime marker as compared to the total number of inhalers dispensed for clinical trials. Dura experienced an early return rate exceeding 30% due to the inhaler's unreliability. This early return rate experienced during clinical trials was much higher than the FDA would find acceptable. In fact, during the development

of medical devices, the industry standard is to try to achieve an early return rate of 1% or less to avoid incurring expensive repairs once the device is on the open market.

13. The unacceptably high early return rate Dura experienced during the first study conducted in Phase III clinical trials (drug efficacy) was caused by reliability problems that kept the inhaler from functioning. The battery-wires that powered the inhaler kept disconnecting from the battery because of faulty welds connecting the battery contacts to the wiring. Additionally, the routing and gauging of certain wires running from the battery to the inhaler's internal motor caused the inhaler to malfunction so that it would not open and close each time when it was dispensing a dose of Albuterol. When these failures occurred before the inhaler reached the 1500 dose lifetime mark, an "end-of-life" response was triggered in the inhaler and it just stopped functioning. When the inhaler was functioning properly and ready to dispense a dose of Albuterol, a green light indicator was activated. Once the end-of-life response was triggered, or if the 1500 dose lifetime was reached, a red-light indicator was activated. Once the red light was on, the inhaler stopped working altogether.

14. As a result of the inhaler's reliability problems during Phase III clinical trials, Dura began making modifications to the inhalers actually being used in the ongoing clinical trials to improve reliability. Dura included multiple versions of the inhaler in the Phase III clinical trials. The modifications made to the inhaler during trials included using different shaped battery contacts that were welded to the battery to better secure the battery wires, re-routing certain

wiring and using stronger gauge wire. Dura also modified the inhaler's lid to make it easier to see the remaining doses of Albuterol and ribbing was added to the outside of the device to make it easier to hold. Dura kept very careful track of the different versions of the inhaler used in clinical trials. The various configurations of the inhaler were given different "Rev" designations. For example, the configuration of the device first used in clinical trials was designated Rev D, while Rev G was a modified version added halfway through clinical trials to address reliability concerns. Rev H and Rev J were designations given to still later versions of the inhaler.

15. All modifications were well documented within the clinical trial results and reliability reports and each test run on each configurations was analyzed in a separate report. In each of the reports, the configuration number and the test type were referenced in the title of the report such as Rev G vibration or Rev G impeller test. More importantly, senior management at Dura, including defendant Prettyman as Senior Vice President of Regulatory Affairs, had to sign off on proposed modifications before they could be made. Other employees within the Regulatory Affairs department, Kathleen Heffernan, Director of Regulatory Affairs, and Darlene Rosario, Regulatory Affairs Manager, were also intimately familiar with the modifications being made to the inhaler and involved in approving the modifications.

16. Senior management at Dura, including defendants, were kept constantly informed of the problems affecting the inhaler's reliability via product reports prepared by Mike Ligotke, the Senior Product Engineer for the Spiros device and Linda Gieschen, the Spiros Project Leader. These same

reports also constantly informed senior management of the different configurations of the inhaler, the different tests being performed and the results of those tests. These reports were prepared for and circulated in advance of and during weekly research and development meetings attended by senior management. Research and development meeting minutes, that also detailed the inhaler's reliability problems and the different versions of the inhaler, were prepared and circulated to senior management following the meetings.

17. Making changes to a device in the middle of clinical trials rendered the trials invalid because the modifications cast doubt on whether the product tested would, in fact, be the final product described in the NDA. Senior executives at Dura were so concerned about the inhaler's reliability problems and the mid-clinical-trial modifications that were made to the device, that the decision was made to contract with an outside testing facility, El Segundo, California-based Wyle Labs, to conduct highly accelerated life tests ("HALT") on the device. HALT are extreme condition tests designed to identify potential operational failures in a device. Dura contracted with Wyle Labs to conduct these tests while Phase III clinical trials were still ongoing. Ed Dusel, Senior Engineering Development Manager, managed the Wyle Lab testing and Mike Ligotke, Senior Project Manager, analyzed the test results. Dura gave Wyle Labs inhaler configurations Revs D, G, H, and J of the device. Dura used the HALT results from Wyle Labs in an 9/98 amendment to Dura's NDA to try to demonstrate that the different inhaler configurations tested in Phase III clinical trials as well as the concurrent HALT resulted in progressively improved operational reliability.

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18. At the same time, Phase III clinical trials were being completed, defendants were already taking steps to complete a major debt offering in the next several months for Dura to obtain desperately needed working capital to acquire additional products. They also knew that Spiros I would exhaust its financial resources during 1997, and Dura would have to exercise its option to repurchase Spiros I and finance a new follow-on Spiros Development Corp. II entity ("Spiros II") to continue to pay for the ongoing development of Albuterol Spiros.

19. In addition, the value of Dura's insiders' existing stock options to purchase thousands of shares of Dura stock at $29.63-$37.63 per share had been completely wiped out by the early 1997 stock decline, while the value of their other lower priced options had been severely diminished. Finally, the 1997 cash bonuses of Dura's top executives – which could amount to 100% of their base salaries – were dependent upon Dura meeting internally set 1997 EPS targets and Dura's stock price performance during 1997.

20. For all of these reasons, it was imperative to Dura's insiders that they drive Dura's stock higher during 1997 to enable Dura to accomplish a huge debt offering to raise desperately needed capital, to exercise its option to purchase Spiros I stock by issuing as few Dura shares as possible, to successfully complete a public offering of Spiros II securities, to restore the value of their stock options so that they could unload hundreds of thousands of shares of the Dura stock they owned, pocketing millions in insider-trading proceeds before the stock collapsed, and to achieve large cash bonuses based on Dura's 1997 EPS and a strong 1997 stock performance.

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21. To accomplish their scheme, defendants commenced in 4/97 a concerted campaign to falsely persuade investors that Dura's sales were increasing and that Dura was successfully completing the development and clinical trials of the Spiros drug delivery system. To ensure their personal gain, the Individual Defendants in 4/97 repriced hundreds of thousands of their $37.63 per share options lower – to just $25 per share. Then on 4/15/97, Dura issued a press release announcing better-than-expected Q1 1997 results, representing that "Dura continues to execute its strategy of developing its proprietary Spiros dry powder drug delivery technology" and has completed the design of its Albuterol Spiros drug system and the patient dosing studies necessary for filing an NDA with the FDA. The 4/15/97 press release also represented that Dura was making strong progress selling Ceclor CD and that the drug was being well received by prescribing physicians. In response to these positive representations and Dura's strong Q1 financial results, Dura's stock soared from $27-7/8 on 4/14/97 to $34 on 4/15/97. Following the release of Dura's Q1 1997 results, defendants went to great lengths to convince securities analysts, during conference calls and in one-on-one sessions, that the Spiros delivery device development was on track and Dura was executing its strategy to transform itself into a drug development company. Defendants interactions with securities analysts had their desired effect as one analyst noted: "Without Spiros, Dura would be strictly a high-growth specialty marketing company, acting as a consolidator of niche respiratory product lines."

22. In fact, however, despite their public praise of the Spiros technology, defendants knew from the clinical trial

data that the Spiros drug delivery system suffered from serious reliability problems forcing Dura to remove over 30% of the inhalers from clinical trials and the Albuterol cassette suffered from serious stability problems, all of which would prevent approval of Dura's NDA. Despite that Dura modified the device, conducted in-house, stability testing showing that Albuterol was not stable and even contracted an outside firm to test the device, defendants assured investors that the device had successfully completed clinical trials, that the Company would file the NDA later in 1997 and commence marketing the device in 1998.

23. In addition to concealing these problems, defendants also concealed a pre-NDA filing meeting Dura conducted with the FDA in 5/97. This meeting, which took place in the FDA's offices in the Washington, D.C. area, was attended by defendants Garner and Prettyman and Kathleen Heffernan, David Kabakoff and Chet Damecki. During that meeting, the FDA raised concerns about how mechanically reliable the doser was for consistently delivering Albuterol to the user's lungs in the right amount or at all. The FDA also questioned whether and how long Albuterol contained in the cassette would remain chemically stable after removal from the foil pouch. By the time the pre-NDA filing meeting occurred with the FDA, Dura had completed clinical trials and 95% of the data from the trials had been received by Dura.

24. Despite their knowledge that Dura's engineers wanted to do further development of the Spiros device, that the Eisele List identified the inhaler's reliability and Albuterol's stability as necessary items to be fixed before an

NDA could be successfully submitted, that Albuterol had in fact failed Dura's in-house temperature-humidity age testing, that Dura had done nothing to remedy Albuterol's stability problems, that serious reliability problems caused over 30% of the Spiros inhalers to fail during clinical trials, that Dura had retained Wyle Labs to conduct HALT and that Dura executives, including defendants Garner and Prettyman, attended the pre-filing meeting with the FDA which raised the same concerns identified by Dura's own engineers in the Eisele List and for which Dura had no satisfactory answer, defendants embarked on a massive bailout of Dura stock selling 188,626 shares for over $7.3 million between 5/12/97 and 7/22/97.

25. Defendants compounded their wrongdoing later in 1997 with additional, highly suspicious insider trading of Dura stock. Because the Spiros device was so unreliable and Dura had been forced to modify the device and could not adequately demonstrate the stability of Albuterol, certain Dura insiders were against filing the NDA. In fact, in late October or early November 1997, a meeting was held to discuss the NDA filing. Defendants Garner and Prettyman along with Kabakoff and Damecki attended the meeting during which Prettyman made it very clear that he did not want to file the NDA, for which his department, Regulatory Affairs, was responsible. Prettyman was against filing the NDA because based on his prior experience – Prettyman worked for the FDA for over ten years prior to working for Dura – he knew the NDA would not be approved by the FDA. Despite this, defendant Garner and Kabakoff forced Prettyman to file the NDA. Shortly after the NDA was filed, Dura and Spiros II raised $88 million to fund Spiros II.

Despite his knowledge that the NDA would not pass, defendant Prettyman sold 15,000 shares of Dura stock on 11/5/97 for proceeds exceeding $728,000. Other defendants similarly engaged in suspicious insider trading concurrent with the filing of the doomed NDA as defendants collectively dumped 197,607 shares for proceeds exceeding $9.2 million between 11/3/97 and 1/6/98.

26. In addition to concealing the problems plaguing the Spiros drug delivery system development, defendants also made false statements regarding strong sales of Dura's drugs, including Ceclor CD, Keftab, Nasarel/Nasalide, Rondec and Dura-Vent. Defendants falsely represented that certain of Dura's recently acquired niche pharmaceutical products were selling well to convince the securities markets that it was achieving strong revenues and earnings even as it completed development of the Spiros drug delivery system. Dura had acquired two prescription antibiotics, Ceclor CD and Keftab, on 8/22/96. Defendant Garner stated: "Keftab and Ceclor CD are ideally suited for Dura as they should provide strong revenue and earnings growth and support the expansion of our sales force to position Dura for an effective launch of our Spiros products."

27. Ceclor CD would become Dura's largest-selling product, however its sales were not growing, but were flat or declining. Ceclor CD is a slow-release form of Ceclor, a second generation cephalosporin generically known as cefaclor. It was developed by Lilly in the 1980's, which later sold it to Dura. As it has significant side effects, including serum-sickness-like reactions and shock, its use has decreased in recent years as more powerful antibiotics with less significant side effects have been developed.

28. Also hurting Ceclor CD sales during the Class Period was the fact that the drug was not listed on most managed-care formularies, and therefore would not be covered by most managed-care insurance. As a result of these factors, Ceclor CD sales began to drop around March or April 1997, and significantly worsened during the summer months. Actual sales were 25-40% below Dura's internal projections. To bolster their representations of strong Ceclor CD sales, Dura reported market share by comparing Ceclor CD not to the entire class of respiratory antibiotics, but only to sales of Lilly's generic Ceclor product. Defendants therefore knew that the market share increases reported during the Class Period were misleading when made and falsely suggested that Ceclor CD sales were strong and expanding. If Dura had properly compared its sales of Ceclor CD to all other drugs in the same class, namely, those drugs used to cure respiratory infections, sales of Ceclor CD would not have reflected any market share growth during the Class Period.

29. Knowing that Dura was experiencing a decline in the demand for its drug lines, including Ceclor CD, Dura undertook a scheme to artificially inflate its revenues and earnings by shipping at the ends of quarters excess amounts of product to wholesalers. Defendants accomplished this in varying ways. The Director of National Accounts, Doug Weiherer, pressured his subordinates to push extra product into the pharmacy chains in order to increase EPS. In addition, defendant Spath or other upper management would contact the Company's larger wholesalers, such as McKesson and Berger Brunswig, to get an "additional buy" from them at quarter ends. The wholesalers took more product than they had orders for because Dura would reduce two or three

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"points" from the wholesale purchase price and extend the payment date to give them time to move the product. As wholesalers operate on a narrow profit margin, these price reductions could increase their margins 30-50%. In 12/97, Dura offered a 5% price reduction to wholesalers on purchases of Ceclor CD.

30. Garner himself had to approve price reductions to wholesalers, so he knew in each instance when these practices occurred. As a result, Dura product inventories in the distribution channel were greatly in excess of the normal one- month supply. As a result of these practices, the success of Dura's products was misrepresented and its sales were artificially inflated. Defendants knew that, as a result of "borrowing" millions of dollars of sales of Ceclor CD and other products from future periods, Dura's sales would eventually fall sharply once this practice was stopped. By the spring of 1998, defendants admitted to securities analysts that Dura's wholesale channels were clogged with as much as a five-month inventory of its products.

31. In addition to false statements about Ceclor CD, defendants also falsely portrayed that the Company was experiencing strong sales of its Keftab, Rondec, Dura-Vent and Nasalide products. In fact, all of these products were experiencing declining sales during the Class Period. For Rondec, defendants failed to disclose that Dura would be unable to recoup its investment in that drug. Dura falsified and inflated its Q1, Q2, Q3 and Q4 1997 EPS by failing to take required write-downs on the carrying value of its investment in the Rondec product line, which were required because the sales of that product line had so declined and were so poor that Dura could not recover its investment in Rondec.

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32. On 2/24/98, after the close of trading, Dura shocked the market by revealing that it expected much lower than forecast 1998 revenues and 1998 EPS – at least $.50-$.55 lower than the $1.40-$1.45 being forecast – due to, *inter alia*, slower Ceclor CD and Nasarel/Nasalide sales and the immediate need to vastly increase the size of Dura's sales force from 270 to over 450 to try to boost sales of existing products. Investors were stunned. Even though the Dow Jones average went up 87.7 points on 2/25/98, Dura's stock collapsed from $39-1/8 on 2/24 to $20-3/4 on 2/25 – an 18-3/8 point, 47% one-day decline on incredible volume of 32 million shares. Analysts were also furious over having been lied to. Alex. Brown analyst Ryan wrote:

> Management credibility has been severely damaged by this announcement, particularly in light of recent investor conference presentations exuding confidence on the Company's fundamentals. . . .
>
> * * *
>
> Our confidence in management and their credibility with us has been greatly diminished. As recently as one month ago, we reviewed our model with the Company line by line and were guided to higher Ceclor CD estimates.

33. As no great surprise to Dura insiders, Dura subsequently revealed that the FDA had found that Albuterol Spiros was not approvable due to electro-mechanical reliability issues and chemistry, manufacturing and control

concerns, but claimed that the FDA "raised no issues on the clinical data with the inhaler filed in the NDA demonstrating therapeutic comparability of Albuterol Spiros™ with Ventolin® (albuterol) MDI using standard lung function measures." Just a few days later, however, the FDA issued a "notice of violation" to Dura stating that Dura's press release "'misleadingly minimizes the fact that Dura must conduct a completely new clinical data [study],'" and demanded that Dura immediately cease distribution of materials containing its previous claims. Dura immediately removed the offending press release from its Web site and has admitted that Albuterol Spiros will be delayed by at least a year as completely new Phase III clinical trials are required. The FDA rejected the NDA for Albuterol Spiros because Dura changed the device during clinical trials, had not shown that the device was reliable, and could not demonstrate Albuterol's device based on the same issues stability. In other words, the FDA rejected the Albuterol Spiros device based on the same issues delineated in the Eisele List in 10/96.

34. Dura's business performed miserably during 1998. Sales of Ceclor CD fell sharply to only about $30 million as Dura admitted the distribution channel was clogged with many months of excess inventory. Dura also revealed that sales of Keftab, Nasalide and Dura-Vent were very disappointing and that sales of its Rondec product had plummeted so much that by mid-1998 Dura had to create DJ Pharma, Inc. to take these drugs off its hands so it could avoid reporting large losses for those products. Dura also admitted that its sales force was inadequate, which contributed to Dura's poor sales. By 9/98, forecasts of Dura's 1998 and 1999 EPS were cut to $.53 and $.71 – large declines

from Dura's 1997 EPS of $.99. Dura's CEO admitted that there was excessive inventory of its top-selling antibiotic Ceclor CD to start the year, which took at least five months to work down.

35. Later still, Dura announced that it would abandon its efforts to seek FDA approval of the Spiros delivery device for use with Albuterol. Dura was never able to solve the Albuterol stability issues that were revealed during Dura's in-house stability testing conducted in 1996 before clinical trials even began.

36. The price action of Dura stock from its 1992 IPO through 12/98 is set forth below:

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Dura Pharmaceuticals, Inc.
February 7, 1992 - January 8, 1999
Daily Stock Prices

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37. Public investors, who purchased Dura stock at prices inflated by the false representations about the successful development of Albuterol Spiros, continuing strong sales of Dura's non-proprietary products, and very strong sales of Ceclor CD, and who thus paid as high as $53 for Dura's stock during the Class Period, have suffered millions in damages. Dura and Dura's insiders who knew the truth fared much better. Before the startling truth was revealed and Dura's stock price collapsed, Dura raised over $375 million in desperately needed new capital from note purchasers, and in total the Individual Defendants unloaded 386,233 shares of their Dura stock at artificially inflated prices as high as $49.31, pocketing over $16.6 million in illegal insider-trading proceeds. This illegal insider selling is summarized below:

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Dura Pharmaceuticals, Inc.

Class Period: April 15, 1997 - February 24, 1998

Insider	Class Period Sales/ Distributions	Sales Proceeds	Percent of Stock Sold (1)	Percent of Total Holdings Sold (2)
Brown, Julia R	39,383	$1,583,590	100%	36%
Cook, Joseph C. Jr.	40,000	$1,780,950	43%	29%
Garner, Cam L.	154,623	$6,456,801	67%	62%
Newman, James W.	52,227	$2,390,417	78%	34%
Prettyman, Charles W.	15,000	$728,100	100%	46%
Spath, Walter F.	50,000	$2,076,500	100%	32%
Woodbury, Mitchell	35,000	$1,603,280	100%	31%
Total:	386,233	$16,619,638		

(1) Includes common stock and options exercised and sold during the Class Period.

(2) Includes common stock, options and warrants exercisable.

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38. Dura's quarterly financial performance is set forth below:

Dura
Quarterly Results
(in thousands, except EPS)

	1996				
	03/31	06/30	09/30	12/31	Year
Revenues	$18,590	$18,800	$25,920	$40,810	$104,210
Net income	$ 4,060	$ 4,610	$ 5,810	$ 9,860	$ 24,340
EPS	$.13	$.14	$.15	$.24	$.68

	1997				
	03/31	06/30	09/30	12/31*	Year*
Revenues	$40,890	$43,630	$43,340	$53,460	$181,320
Net income	$ 8,790	$ 9,280	$11,200	$18,000	$ 47,400
EPS	$.19	$.20	$.24	$.37	$.99

	1998				
	03/31	06/30	09/30	12/31	Year
Revenues	$48,770	$51,940	$43,360	$55,080	$199,152
Net income (Loss)	$ 7,160	$ 8,180	$ 2,420	($15,030)	$ 2,733
EPS	$.16	$.18	$.05	($0.33)	$0.06

* Excludes one-time charges of $137.6 million in Q4 1997 related to the Spiros development program. Including the charges, Dura suffered a loss of $2.57 and $1.93 for the quarter and year ended 12/31/97.

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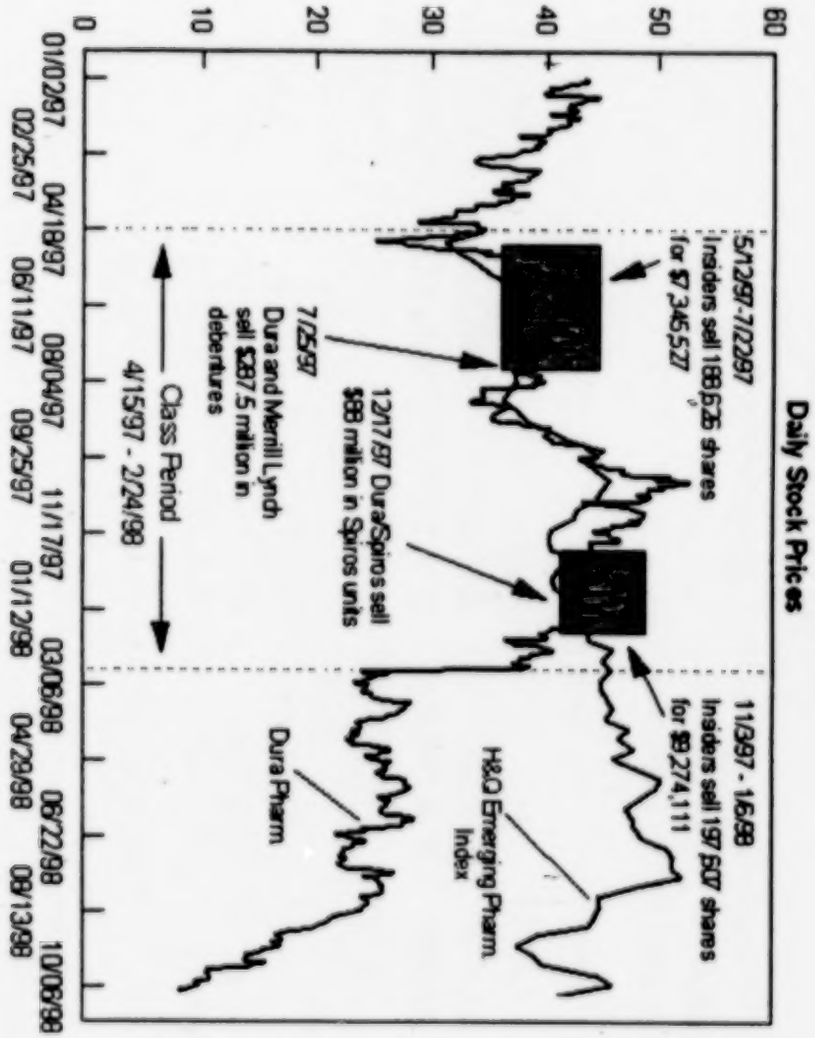
39. The chart below shows how the defendants took advantage of their false and misleading statements and Dura's artificially inflated stock price and that, when compared to an index of similar stocks, Dura's stock was inflated and declined due to company-specific events and not market or industry forces:



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JURISDICTION AND VENUE

40. The claims asserted herein arise under §§10(b) and 20(a) of the Securities Exchange Act of 1934 ("1934 Act") and Rule 10b-5. Jurisdiction is conferred by §27 of the 1934 Act. Venue is proper pursuant to §27 of the 1934 Act.

THE PARTIES

Lead Plaintiffs

41. Michael Broudo purchased 100 shares of Dura common stock on 2/24/98 at $38.94 per share and 2,000 shares on 2/24/98 at $38.88 per share, and was damaged thereby.

42. Baldev S. Gill purchased 4,000 shares of Dura common stock on 2/9/98 at $39.88 per share; 2,000 shares on 2/13/98 at $38.72 per share; 1,000 shares on 2/17/98 at $37.64 per share; 2,000 shares on 2/19/98 at $37.53 per share; and 3,000 shares on 2/20/98 at $36.96 per share, and was damaged thereby.

43. Larry Morgan IRA purchased 1,290 shares of Dura common stock on 1/28/98 at $39.13 per share, and was damaged thereby.

44. Leonid S. Shvartsman (for G&S Partnership) purchased 2,000 shares of Dura common stock on 2/17/98 at $38.25 per share, and was damaged thereby.

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45. Neil Siskind purchased 15 of Dura's Convertible Subordinated Notes on 7/30/98 at $1,025.00 per note, and was damaged thereby.

46. Roberta Speck purchased 50 of Dura's Convertible Subordinated Notes on 7/30/97 at $1,022.50 per note, and was damaged thereby.

47. Brent Vogt purchased 500 shares of Dura common stock on 6/15/97 at $39.58 per share; 100 shares on 7/29/97 at $37.32 per share; 500 shares on 9/2/97 at $36.35 per share; 500 shares on 9/17/97 at $41.60 per share; and 500 shares on 10/29/97 at $45.35 per share, and was damaged thereby.

Defendants

48. Dura Pharmaceuticals, Inc. ("Dura") is a San Diego-based developer and marketer of prescription pharmaceutical products for the treatment of allergies, asthma and related respiratory conditions. Dura pursues a two-step business strategy: (1) licensing, acquiring and developing late stage pharmaceuticals for marketing to high-prescribing respiratory physicians, and (2) developing Spiros, a proprietary dry powder drug delivery system for use with respiratory and non-respiratory drugs. Dura's common stock trades in an efficient market on the NASDAQ National Market System. As of the beginning of the Class Period, Dura's products included:

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Allergy, Cough and Cold

Dura-Vent®	–	Tablets
Dura-Vent/DA®	–	Tablets
Rondec®	–	Oral drops
Rondec®	–	Syrup
Rondec®	–	TR tablet
Rondec®	–	Tablet
Rondec®	–	DM oral drops
Rondec®	–	DM syrup
Rondec®	–	Chewable tablets

Antibiotics

Keftab®	–	Tablets
Ceclor®	–	CD tablets

49. (a) Cam L. Garner ("Garner") was President, Chief Executive and Operating Officer and Chairman of Dura during the Class Period. He sold 154,623 shares of his Dura stock based on inside information, pocketing over $6.4 million in illegal insider-trading proceeds – 67% of the Dura stock he actually owned.

(b) James W. Newman ("Newman") was Senior VP-Finance & Administration and CFO of Dura during the Class Period. He sold 52,227 shares of his Dura stock based on inside information, pocketing over $2.3 million in illegal insider-trading proceeds – 78% of the Dura stock he actually owned.

(c) Charles W. Prettyman ("Prettyman") was Senior VP-Development and Regulatory Affairs of Dura during the Class Period. He sold 15,000 shares of his Dura stock based

on inside information, pocketing over $728,000 in illegal insider-trading proceeds – 100% of the Dura stock he actually owned.

(d) Walter F. Spath ("Spath") was Senior VP-Sales & Marketing of Dura during the Class Period. He sold 50,000 shares of his Dura stock based on inside information, pocketing over $2 million in illegal-insider trading proceeds – 100% of the Dura stock he actually owned.

(e) Mitchell R. Woodbury ("Woodbury") was SVP/ General Counsel of Dura during the Class Period. He sold 35,000 shares of his Dura stock based on inside information, pocketing over $1.6 million in illegal insider-trading proceeds – 100% of the Dura stock he actually owned.

(f) Julia R. Brown ("Brown") was Senior VP-Business Development and Planning of Dura during the Class Period. She sold 39,383 shares of her Dura stock based on inside information, pocketing over $1.5 million in illegal insider-trading proceeds – 100% of the Dura stock she actually owned.

(g) Joseph C. Cook, Jr. ("Cook") was a director of Dura during the Class Period. He sold 40,000 shares of his Dura stock based on inside information, pocketing over $1.7 million in illegal insider-trading proceeds – 43% of the Dura stock he actually owned.

(h) The defendants named in ¶49(a)-(g) are the "Individual Defendants," and are each liable for the false statements pleaded in ¶¶51, 55-56, 74, 111 and 123, as they were "group-published" information.

50. Garner, Newman and Spath, by reason of their positions with Dura, were controlling persons of Dura and the other Individual Defendants. They are therefore liable under §20(a) of the 1934 Act.

FALSE OR MISLEADING STATEMENTS

51. On or about 4/15/97, in its 1996 Annual Report, Dura stated, among other things, that:

> Dura is able to access about 52% of total respiratory prescriptions written with its highly focused, yet relatively small, sales and marketing organization. The Company's goal is to increase its sales organization to approximately 280 by year-end 1997.
>
> * * *
>
> Dura's highly motivated sales people have proven sales records. . . . Their concentration on respiratory disease, coupled with extensive product and sales training, differentiates them from their competition.
>
> * * *
>
> Dura's highly trained sales representatives have established credibility.... Due to the concentrated nature of the Company's target market, Dura can achieve significant penetration with a relatively small sales force.

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52. At all times during the Class Period, Dura knew that the statements about the quality of its sales force were false when made. In reality, Dura's sales force was inefficient, underpaid, and suffered from an extremely high rate of turnover. Compensation packages for Dura sales representatives were not competitive with the rest of the pharmaceutical industry. In early 1997, Dura attempted to reduce its salesperson turnover rate by increasing the base salary of its sales force. However, at the same time, Dura decreased commissions paid to salespersons, thereby failing to solve its turnover problem. Dura failed to distribute sales revenue figures of any kind to the sales force, thereby making them ill-equipped to deal with changes in the market. Dura frequently ignored its stated requirement that sales applicants have a minimum of two years of prior sales experience, thereby reducing the collective quality of the sales force.

53. Additionally, Dura's sales force was hampered by a non-operational software and sales force hand-held computer system during the Class Period. Dura had contracted with Walsh International, Inc. to install the Precise System by 9/96. By 4/97, however, the system had just been installed and Dura had identified some 24 malfunctions that were severely hampering its sales force's performance. By 12/97, the malfunctions had worsened to the point where Dura was incapable of preparing necessary quarterly inventory reports or accurate FDA reporting.

54. Defendant Woodbury's knowledge of these problems plaguing Dura's inventory systems are demonstrated by the letter he sent to and the lawsuit filed against Walsh International in 4/98. *See* Exhibit A hereto.

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55. With respect to Dura's Spiros drug delivery technology, the 1996 Annual Report stated:

> The Spiros family of drug delivery systems advances the promise of pulmonary drug delivery by addressing the weaknesses of existing inhalation delivery systems. In contrast to existing systems, including nebulizers, metered dose inhalers (MDIs) and traditional dry powder inhalers (DPIs), Dura's Spiros system is designed to be easy for patients to use, is breath-actuated and free of CFC propellants. In addition, each Spiros system is compact, durable and reusable.
>
> Most important, however, is the fact that Spiros is designed to be "flow rate independent," which means it can deliver a consistent dose of a drug relatively independent of a patient's ability to inhale forcefully. It also means most patients receive an adequate dose with minimal inhalation effort – a key benefit to a patient who is suffering an asthma attack. The greater ease-of-use and convenience of Spiros, combined with its effectiveness in delivering the intended dose to the patient, should translate into more regular and efficient use. . . .
>
> CORE COMPETENCIES IN PLACE
>
> Dura's current Spiros development capabilities include a newly constructed manufacturing facility designed to meet rigid

GMP requirements, and dedicated to the production of dry powder formulations of various pharmaceutical compounds. The facility has been licensed by the State of California and clinical trial materials are now being manufactured on-site. As the Spiros program advances, the facility will have the capacity to produce commercial-scale quantities of material.

* * *

Dura's expert scientific team has developed precision technology for the formulation, blending, milling and filing of a variety of drugs for delivery in Spiros.

56. Also, on 4/15/97, Dura announced in a press release better-than-expected Q1 1997 results:

> Dura . . . announced that revenues and net income for the first quarter more than doubled over the same period last year. Revenues for the quarter totaled $40.9 million and net income was $8.8 million. . . . [EPS] were $0.19, a 73% increase from $0.11 in first quarter 1996. . . .
>
> "We are very pleased with first quarter results," said Cam Garner, Dura's Chairman, President and Chief Executive Officer, "and we are happy with the strong progress made in selling our new respiratory antibiotic, Ceclor® CD." In the first quarter, Dura doubled the Ceclor® CD

> share of cefaclor weekly new prescriptions over fourth quarter 1996 to 15%, up from 7.5% at year end. Commenting on this increase, Garner noted "Since the product launch just 20 weeks ago, our sales representatives have been successfully delivering the message to high prescribing physicians of patient compliance advantages of Ceclor® CD over Ceclor® in the treatment of bronchitis.

* * *

> Dura continues to execute its strategy of developing its proprietary Spiros™ dry powder drug delivery technology. . . ."Patient dosing was completed for clinical trials needed for NDA (new drug application) submission of Spiros™ albuterol, and U.S. clinical trials for Spiros™ beclomethasone were initiated." . . .
>
> "The year is off to a great start," commented Garner.

57. Dura's stock soared from $27-7/8 on 4/14/97 to $34 on 4/15/97, as a result of these announcements.

58. Each of the statements made on 4/15/97 regarding Dura's sales and business performance were false or misleading when issued. The true but concealed facts were:

(a) Sales of Dura's major drug products were flat or declining, especially Ceclor CD, whose sales levels were dropping throughout the Class Period;

(b) Dura was encountering serious and persistent problems with its sales force which was inadequately trained, was suffering from very high turnover and was insufficient in number and skill to adequately market Dura's drug products, including Ceclor CD, Keftab and Rondec;

(c) Dura was experiencing serious problems with its inventory and sales reporting system as a new system that was supposed to be fully operational by the fall of 1996 had not yet been installed;

(d) In order to cover up the sales shortfalls described above, Dura was engaging in a subterfuge to artificially inflate its revenues and EPS by shipping excessive amounts of Ceclor CD and other products to wholesalers, who were enticed to take the product by price discounts, extended payment terms and/or other incentives. As a result, Dura's Ceclor CD and other product inventories in the distribution channel were greatly in excess of the normal one-month supply. As a result of this practice, Dura's Ceclor CD sales were artificially inflated and Dura's insiders knew that as a result of "borrowing" millions of dollars of sales of Ceclor CD from future periods, Dura's sales of Ceclor CD would fall sharply once this practice stopped;

(e) Dura's Rondec and Dura-Vent product lines were suffering very poor sales, declining so rapidly and performing so poorly that Dura would not be able to recover its remaining investment in Rondec from those sales; and

(f) Dura had falsified and artificially inflated its Q1 1997 EPS by failing to take required write-downs on the

carrying value of its investment in the Rondec product line, which were required because the sales of that product line had so declined and were so poor that Dura could not recover its remaining investment in Rondec

59. Garner, Prettyman, Spath, Woodbury and Brown had knowledge of the false and misleading statements regarding Dura's Q1 1997 results as they were the top executives of Dura. They ran Dura as "hands-on" managers, dealing with the important issues facing Dura's business, such as sales of its Ceclor CD/Keftab, Rondec, Nasalide/Nasarel and Dura-Vent products, the development of its new Albuterol Spiros product, the issuing of Dura's SEC filings, press releases and financial statements, Dura's investment in Rondec and the development and expansion of its sales force. Garner, Prettyman, Spath, Woodbury and Brown each attended the weekly executive management meetings from 8:00 to 10:00 a.m. every Monday.

60. Because increased sales of Ceclor CD/Keftab, Rondec, Nasalide/Nasarel and Dura-Vent products, the successful development of and substantial sales of Dura's Albuterol Spiros product, and the continuing sales of Dura's core products were indispensable elements to Dura meeting its internally budgeted and publicly disseminated 1998 and 1999 revenue and EPS forecasts, defendants constantly monitored each of these key factors affecting Dura's business.

61. Each of the Individual Defendants, because of their top executive positions with Dura and involvement in the day-to-day management of its business, actually knew from internal corporate documents and conversations with other

corporate officers and employees and their attendance at management and Board meetings, the adverse non-public information about the poor sales of Dura's Ceclor CD/Keftab, Rondec, Nasalide/Nasarel and Dura-Vent products, the serious problems in the development of Dura's Spiros drug development system, Dura's falsification of its reported Q1 1997 EPS, and Dura's deteriorating revenue and EPS prospects.

62. The Dura Defendants closely monitored the performance of Dura's business via internal reports generated on a daily, weekly and monthly basis. Among the specialized reports prepared were drug-by-drug sales volume summaries, year-over-year sales volume comparisons of each Dura product, sales volume comparisons of Dura drugs to competitor drugs, sales revenue reports, and daily, weekly and monthly reports on prescription volumes, competitor prescription volumes, and market share. On a monthly basis, Dura's Information Technology department, after receiving information from IMS, a service that tracks prescription drug sales, would prepare reports comparing actual versus planned sales of Dura's drug products. Through such reports, which were prepared for and disseminated by defendant Spath, defendants were kept apprised of Dura's drug sales and knew that such sales were below plan and insufficient for Dura to achieve continued growth in sales and earnings.

63. The monthly sales reports showed, for example, that Ceclor CD sales began dropping around March-April 1997, and significantly worsened during the summer of 1997. These reports showed that sales were 25-40% below internal projections at that time. Monthly sales reports showed that

Ceclor CD sales dropped from 47,288 in 3/97 to 39,808 in 5/97 to 24,797 in 7/97.

64. The Finance Department also distributed monthly financial reports comparing Dura's actual financial results to projected results. Thus, each Dura Defendant was apprised of the sales of every Dura product so that they knew where Dura stood in terms of the sale of and demand for its products as well as Dura's actual results compared to plan. Thus, the Dura Defendants were constantly aware of the prescription rate for its products and knew that excess inventory was building up with distributors and that Dura was not recouping its investments in certain drugs.

65. Dura recognized revenue on the sale of a product when it shipped the product to drug wholesalers. These drug wholesalers in turn would resell the drug to pharmacies, drug chains or even individual physicians. Dura did not publicly disclose to analysts or investors sales of each of its various drug products, *i.e.*, shipments to wholesalers. Thus, analysts and investors were completely dependent upon what Dura told them regarding sales of these products, as shipment-to-wholesaler data is not publicly available. While the number of prescriptions written for a given drug is publicly available on a periodic basis, this information does not disclose the rate at which drugs are being shipped to wholesalers, as that information is not publicly available. Analysts and investors did not know that Dura was shipping amounts of Ceclor CD to wholesalers well in excess of the amount justified by or necessary to keep pace with current prescription levels and thus Dura had created vastly excessive amounts of inventory of Ceclor CD in the distribution channel. While Dura reported

higher revenue and EPS during each of the quarters of 1997 from these shipments, these excessive inventory levels would eventually have to be worked off, causing sales and earnings to plummet.

66. Dura's statements regarding the Albuterol Spiros development were false and misleading when made. Telling investors that Dura had successfully completed clinical trials was highly misleading. It was all but certain that Dura's NDA for Albuterol Spiros would be rejected by the FDA and Dura would be required to completely redo its Phase III clinical human trials, and that the product would be delayed in reaching the market, if it ever reached the market. The configuration of the product Dura used to conduct clinical trials was unreliable and plagued by significant electro-mechanical problems. During clinical trials over 30% of the inhalers failed. One problem was that a light which came on to indicate that the medication dose had been successfully delivered operated erratically and did not consistently turn on due to a defect in a printed circuit board in the product. A second defect was that the small battery-operated motor in the product to drive a fan to push the medication dose into the patient did not reliably turn on upon inhalation as it was supposed to. Dura was unable to fix these problems prior to commencing Phase III clinical trials. Dura was conducting its Phase III clinical trials with versions of Albuterol Spiros that had these defects and, in fact, changed the device during clinical trials. Dura knew this would invalidate the Phase III clinical trials.

67. Dura also discovered serious problems with the stability of Albuterol in 1996 even before Phase III clinical

trials began. Once Albuterol was removed from its foil pouch container, as a dry powder it is subject to humidity and temperature problems and degradation. To address stability concerns, Dura conducted in-house temperature and humidity aging where Albuterol was aged for fixed intervals at 25 degrees Celsius and 75 percent relative humidity under industry and FDA guidelines. During this testing, Dura determined that Albuterol was unstable when aged and subject to clumping which reduced its efficacy when exposed to humidity.

68. Defendants knew, based on their prior experience with the FDA and the medical device industry, that the FDA would not approve an NDA for an unreliable product and unstable drug. For example, during clinical trials, Dura experienced an early return rate exceeding 30% for the Spiros device. Industry standards dictated that an NDA not be filed unless the early return rate was 1% or less. Defendants Garner, Prettyman, Spath, Woodbury and Brown were informed during executive management meeting held every Monday from 8:00 to 10:00 a.m. of the problems encountered during the Phase III clinical trials and of Albuterol's stability problems. Furthermore, defendants Garner and Prettyman attended Research and Development meetings, also held weekly, during which the Spiros device development team presented Phase III clinical trial results and stability test results. Minutes were also generated from these meetings and circulated to senior management.

69. To address the reliability problems plaguing the Spiros device during clinical trials, Dura decided to modify the device while the trials were ongoing. All device

modifications had to be approved by defendant Prettyman and others in his Regulatory Affairs department. Dura also kept careful records of the different configurations of the Spiros device labeled Rev D or Rev G. All modifications were documented in the clinical trial results and each test on each configuration was analyzed independently in a separate report. The Senior Project Engineer, Mike Ligotke, and Project Leader, Linda Gieschen, were responsible for drafting these reports.

70. Defendants were also aware of the reliability problems plaguing the Spiros device and the Albuterol stability problems from the Eisele List presented to senior management during an executive management meeting in 10/96. Bob Eisele, Vice President of Product Development, prepared a list that was contained in a 5-6 page document which set forth necessary items to be addressed before an NDA could be properly submitted. In fact, through the Eisele List, Dura's engineers recommended that further development of the Spiros device be completed and the stability of Albuterol be established before the NDA was submitted. Thus, senior management, including defendants Garner, Prettyman, Spath, Woodbury and Brown, were informed of these problems even before they were revealed during clinical trials. Defendants ignored Dura's engineers and proceeded with clinical trials without fixing these issues.

71. On 4/15/97, Oppenheimer & Company, Inc. ("Oppenheimer"), Alex. Brown, Robertson Stephens & Co. ("Robertson Stephens) and William Blair & Co. ("William Blair"), issued reports on Dura and the development of Spiros which were based on and repeated information provided in a

4/15/97 conference call with securities analysts in conjunction with the 1996 Annual Report and press release and in follow-up conversations with Garner or Newman. The Oppenheimer report stated:

> [T]he company's second business, that which is developing a proprietary drug delivery system for drugs administered by the inhalation route, moves ever closer to commercialization. Here, ***the company's Spiros dry powder, non-aerosol system will shortly be completing clinical trials using albuterol, the most widely-used inhaled asthma medicine, leading to filing for approval with the FDA late this year.***

The Alex. Brown report stated:

> The Company's efforts to develop new products are ***on track*** for an FDA filing in 2H 1997 for the first Spiros product, a dry powder formulation of albuterol

The Robertson Stephens report stated:

> Dura announced on March 6, 1997 that it had completed patient dosing in its Spiros albuterol trials. . . . ***[W]e still expect a 4Q98 approval and launch***. . . . Dura's Spiros manufacturing facilities appear to be close to commercial scale-up capacity.

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The William Blair report stated:

> We still expect Spiros albuterol to be filed in the second half of this year for marketing approval in the United States. . . . The company expects to file NDAs for Spiros beclomethasone and Spiros ipratropium in 1998 and 1999, respectively, with sales following as early as one year after NDA filings.

72. On 4/24/97, Oppenheimer issued a report on Dura which was based on and repeated information concerning Dura's Spiros development provided in conversation with Garner and Newman. The report stated:

> [The] Spiros product [will] become commercialized late next year. . . . This program has now progressed to the point that the first Spiros product, inhaled albuterol without the need for a propellant, should be submitted to the FDA before the end of this year.

73. On 4/28/97, UBS Securities ("UBS") issued a report on Dura which was based on and repeated information concerning Dura's Spiros development provided in conversations with Dura executives, including Garner or Newman. The report stated:

> ***Without Spiros, Dura would be strictly a high-growth speciality marketing company, acting as a consolidator of niche respiratory product lines.*** . . .

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> What differentiates Dura from a typical marketing company is its interests in becoming more "fully-integrated" mainly through developing its own platform technology, the Spiros dry powder inhaler. We believe that this technology will provide an important growth catalyst following the second half 1997 NDA filing and our expectations for approval in the U.S. in the second half of 1998. Based on our projections, Spiros revenues will add about $58 million to Dura's current sales base in 1999.

74. On 5/7/97, Dura announced it had acquired the Nasarel/Nasalide spray product line from Roche Holding AG. Defendant Garner stated that "The Nasarel(tm) and Nasilide(tm) products are ideal for Dura as they fit squarely within our respiratory focus and add a new respiratory category to our product portfolio, diversifying our offering to high-prescribing physicians and further leveraging our sales representatives' time in every sales call."

75. On 5/7/97-5/9/97, UBS, Vector Securities Intl. ("Vector") and William Blair issued reports on Dura after discussions with Garner and Newman following the Roche Holding AG announcement which were based on and repeated information provided by them. The 5/7/97 UBS report stated:

> Dura expects to have 350 reps in place by the time of the launch of the first Spiros inhaler product (Spiros albuterol) in late-1998.

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The 5/8/97 Vector report stated:

> Separately, the company is still on track to submit their first Spiros NDA filing in the second half of 1997 for the dry-powder delivery of albuterol. The addition of 50 sales people further prepares Dura for the first Spiros product launch, potentially in the second half of 1998.

The 5/9/97 William Blair report stated:

> Dura expects to have about 350 sales reps in time for the anticipated introduction of Spiros albuterol in late 1998.

76. On 5/30/97, Alex. Brown and Vector issued reports on Dura and the Spiros development after discussions with Dura executives, including Garner and Newman, which were based on and repeated information provided by them. The Alex. Brown report stated:

> DURA will file its first NDA for Spiros albuterol with the FDA in 2H 1997, which will compete in the sizable $670 million market for albuterol, and could add $100 million in revenues by 2000 ....

The Vector Securities report stated:

> [W]e note that the company still appears on track to submit its first Spiros NDA filing in the second half of 1997. . . .

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77. Dura's 5/7/97 announcement was false and misleading for the reasons set forth in ¶¶52-53.

78. Defendants had knowledge of this false statement for the same reasons set forth in ¶54.

79. On 6/5/97, Dura issued a release stating:

> Dura . . . announced the completion of the clinical trials necessary for a new drug application (NDA) submission for the Albuterol Spiros™ product. . . .
>
> "Our clinical trials for Albuterol Spiros™ were designed to demonstrate comparability of the Spiros™ delivery system with a leading branded metered dose inhaler product," noted David S. Kabakoff, Dura's Executive Vice President and President and CEO of Spiros Corp. "We are pleased with the results to date and are preparing the NDA for filing in the latter half of this year."

80. Dura's announcement that clinical trials had been completed on 6/5/97 and statements made to and repeated by securities analysts in 5/97 were false and misleading for the reasons set forth in ¶¶66-70. In addition, telling investors that clinical trials had been successfully completed and that the Company was on track to file its NDA later in 1997 was also false and misleading because Dura representatives, including defendants Garner and Prettyman, attended a pre-filing meeting with the FDA in 5/97 in the FDA's offices in the Washington D.C. area. During that meeting, the FDA

informed Dura that it was concerned with the Spiros device's reliability and with Albuterol's stability.

81. Defendants had scienter of the falsity of the statements regarding the completion of clinical trials for the reasons set forth in ¶¶66-70. Defendants' scienter is further demonstrated by the pre-filing meeting with the FDA attended by defendants Garner and Prettyman in 5/97. Furthermore, these defendants' scienter is also demonstrated through their regular attendance at the weekly Research and Development meetings to discuss the Spiros device. At one such meeting, shortly before the pre-filing meeting with the FDA, defendant Garner asked the Spiros development team about the inhaler's reliability. During that meeting, the Spiros development team again informed defendants Garner and Prettyman that over 30% of the inhalers failed during clinical trials.

82. Between 6/24-26/97, defendant Newman appeared at the William Blair 1997 Investment Conference in Chicago. As reported by William Blair on 6/30/97, Newman told analysts, money and portfolio managers, institutional investors, brokers and stock traders in a formal presentation that:

> • Overall, the company was performing well in both the acquisition and Spiros product development fronts. Dura's recently acquired key product, Ceclor CD, continued to gain market share – it had an approximate 17.9% share of the cefaclor market, versus 16.9% at the end of April and 7.5% at the end of 12/96.

> • Dura still planned to file an Albuterol Spiros product by year's end.
>
> • One of the main reasons Dura could capture additional licensing/co-promotion agreements was that it had a highly specialized sales force of about 250 reps that were focused on the respiratory prescription market. Although Dura's sales force was relatively small, it still could call on almost 45-50% of the high respiratory prescription writers.
>
> • The Company also was continuing to develop the Spiros product line aggressively. Albuterol Spiros NDA should be filed by the fall of 1997.

83. The statements made during the William Blair Investment Conference detailed above were false or misleading when issued and made with scienter for the reasons described in ¶¶66-70, 80-81 above.

84. By 7/2/97, Dura stock had recovered to $44-7/8 from its 4/97 low of $22-3/4. As Dura's stock soared higher, despite their knowledge that Dura's own engineers thought it was premature to file an NDA, that over 30% of the Spiros inhalers failed during clinical trials, that Albuterol was unstable, and that in 5/97 in a pre-filing meeting the FDA had raised the same issues Dura's own engineers warned about and for which Dura had no satisfactory clinical data, Garner, Spath, Cook, Brown and Newman unloaded 188,626 shares of their Dura stock, pocketing $7,345,527 in illegal insider-trading proceeds.

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85. On 7/15/97, Dura reported better-than-expected Q2 1997 results in a press release, stating:

> Net income for the second quarter ended June 30, 1997 totaled $9.3 million, or $0.20 per share, on revenues of $43.6 million compared to net income of $4.6 million, or $0.12 per share, on revenues of $18.8 million in the second quarter ended June 30, 1996.
>
> * * *
>
> Commenting on the results for the quarter, Dura Chairman, President and Chief Executive Officer Cam L. Garner stated, "We are pleased with Dura's performance in the second quarter of 1997. Ceclor® CD (cefaclor extended release tablets) and Keftab® (cephalexin HC1, USP) . . . have been well received by physicians, who are responding favorably to our promotional efforts. We are also benefitting from our more experienced and expanded sales force, which currently totals approximately 225 representatives. . . .
>
> . . . We completed clinical trials necessary for NDA (new drug application) submission and are on track to file the Albuterol Spiros™ NDA on behalf of Spiros Corp. in the second half of 1997.

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86. The statements regarding Dura's Q2 1997 results were false and misleading when issued. The true but concealed facts were: -

(a) Sales of Dura's major drug products were flat or declining, especially Ceclor CD, whose sales levels were dropping throughout the Class Period;

(b) Dura was encountering serious and persistent problems with its sales force which was inadequately trained, was suffering from very high turnover and was insufficient in number and skill to adequately market Dura's drug products, including Ceclor CD, Keftab and Rondec;

(c) In order to cover up the sales shortfalls described above, Dura was engaging in a subterfuge to artificially inflate its revenues and EPS by shipping excessive amounts of Ceclor CD and other products to wholesalers, who were enticed to take the product by price discounts, extended payment terms and/or other incentives. As a result, Dura's Ceclor CD and other product inventories in the distribution channel were greatly in excess of the normal one-month supply. As a result of this practice, Dura's Ceclor CD sales were artificially inflated and Dura's insiders knew that as a result of the "borrowing" of millions of dollars of sales of Ceclor CD from future periods, Dura's sales of Ceclor CD would inevitably fall sharply once this practice stopped;

(d) Sales of Dura's Nasalide spray products were also poor and well below expectations;

(e) Dura's Rondec and Dura-Vent product lines were suffering very poor sales, declining so rapidly and performing so poorly that Dura would not be able to recover its remaining investment in Rondec from those sales; and

(f) Dura had falsified and artificially inflated its Q1 and Q2 1997 EPS by failing to take required write-downs on the carrying value of its investment in the Rondec product line, which were required because the sales of that product line had so declined and were so poor that Dura could not recover its remaining investment in Rondec.

87. Defendants had scienter of the false and misleading Q2 1997 results because Garner, Prettyman, Spath, Woodbury and Brown were the top executives of Dura. They ran Dura as "hands-on" managers, dealing with the important issues facing Dura's business, such as sales of its Ceclor CD/Keftab, Rondec, Nasalide/Nasarel and Dura-Vent products, the development of its new Albuterol Spiros product, the issuing of Dura's SEC filings, press releases and financial statements, Dura's investment in Rondec and the development and expansion of its sales force. Garner, Prettyman, Spath, Woodbury and Brown each attended the weekly executive management meetings from 8:00 to 10:00 a.m. every Monday.

88. Because increased sales of Ceclor CD/Keftab, Rondec, Nasalide/Nasarel and Dura-Vent products, the successful development of and substantial sales of Dura's Albuterol Spiros product, and the continuing sales of Dura's core products were indispensable elements to Dura meeting its internally budgeted and publicly disseminated 1998 and 1999 revenue and EPS forecasts, defendants constantly monitored each of these key factors affecting Dura's business.

89. Each of the Individual Defendants, because of their top executive positions with Dura and involvement in the day-to-day management of its business, actually knew from internal corporate documents and conversations with other corporate officers and employees and their attendance at management and Board meetings, the adverse non-public information about the poor sales of Dura's Ceclor CD/Keftab, Rondec, Nasalide/Nasarel and Dura-Vent products, the serious problems in the development of Dura's Spiros drug development system, Dura's falsification of its reported Q2 1997 EPS, and Dura's deteriorating revenue and EPS prospects.

90. The Dura Defendants closely monitored the performance of Dura's business via internal reports generated on a daily, weekly and monthly basis. Among the specialized reports prepared were drug-by-drug sales volume summaries, year-over-year sales volume comparisons of each Dura product, sales volume comparisons of Dura drugs to competitor drugs, sales revenue reports, and daily, weekly and monthly reports on prescription volumes, competitor prescription volumes, and market share. On a monthly basis, Dura's Information Technology department, after receiving information from IMS, a service that tracks prescription drug sales, would prepare reports comparing actual versus planned sales of Dura's drug products. Through such reports, which were prepared for and disseminated by defendant Spath, defendants were kept apprised of Dura's drug sales and knew that such sales were below plan and insufficient for Dura to achieve continued growth in sales and earnings.

91. The monthly sales reports showed, for example, that Ceclor CD sales began dropping around March-April 1997, and significantly worsened during the summer of 1997. These reports showed that sales were 25-40% below internal projections at that time. Monthly sales reports showed that Ceclor CD sales dropped from 47,288 in 3/97 to 39,808 in 5/97 to 24,797 in 7/97.

92. The Finance Department also distributed monthly financial reports comparing Dura's actual financial results to projected results. Thus, each Dura Defendant was apprised of the sales of every Dura product so that they knew where Dura stood in terms of the sale of and demand for its products as well as Dura's actual results compared to plan. Thus, the Dura Defendants were constantly aware of the prescription rate for its products and knew that excess inventory was building up with distributors and that Dura was not recouping its investments in certain drugs.

93. Dura recognized revenue on the sale of a product when it shipped the product to drug wholesalers. These drug wholesalers in turn would resell the drug to pharmacies, drug chains or even individual physicians. Dura did not publicly disclose to analysts or investors sales of each of its various drug products, *i.e.*, shipments to wholesalers. Thus, analysts and investors were completely dependent upon what Dura told them regarding sales of these products, as shipment-to-wholesaler data is not publicly available. While the number of prescriptions written for a given drug is publicly available on a periodic basis, this information does not disclose the rate at which drugs are being shipped to wholesalers, as that information is not publicly available. Analysts and investors

did not know that Dura was shipping amounts of Ceclor CD to wholesalers well in excess of the amount justified by or necessary to keep pace with current prescription levels and thus Dura had created vastly excessive amounts of inventory of Ceclor CD in the distribution channel. While Dura reported higher revenue and EPS during each of the quarters of 1997 from these shipments, these excessive inventory levels would eventually have to be worked off, causing sales and earnings to plummet.

94. On 7/15/97, Vector, Alex. Brown, William Blair, Robertson Stephens and Oppenheimer issued reports on Dura which were based on and repeated information provided in a 7/15/97 conference call following the Q2 1997 press release and in follow-up conversations concerning the Spiros development with Garner and Newman. The Vector report stated:

> * The company also reiterated that it remains on track to file the Albuterol Spiros NDA (new drug application) in the second half 1997.

The Alex. Brown report stated:

> Spiros Is The Platform For Long-Term Growth
>
> ***Efforts to develop new products are on track***; Spiros albuterol . . . could be on the market in late 1998, with initial sales of $10 million growing to over $55 million by 2000. . . .

* * *

Appendix C

[W]e believe ***upside could emanate from the launch of Spiros albuterol in mid-1998.***

The William Blair report stated:

> We still expect Spiros albuterol to be filed in the second half of this year for marketing approval in the United States. . . . The company expects to file NDAs for Spiros beclomethasone and Spiros ipratropium in 1998 and 1999, respectively, with sales following as early as one year after NDA filings. . . . These products should contribute significantly to Dura's long-term revenue and earnings growth.

The Robertson Stephens report stated:

Spiros continue[s] on track or ahead of schedule.

The Oppenheimer report stated:

> [T]he company's second business, which is developing a proprietary drug delivery system for drugs administered by the inhalation route, moves ever closer to commercialization.

95. Dura's statement in its 7/15/97 press release and statements made to and repeated by securities analysts regarding the Spiros development were false and misleading when made.

Appendix C

96. Telling investors that Dura had successfully completed clinical trials was highly misleading. It was all but certain that Dura's NDA for Albuterol Spiros would be rejected by the FDA and Dura would be required to completely redo its Phase III clinical human trials, and that the product would be delayed in reaching the market, if it ever reached the market. The configuration of the product Dura used to conduct clinical trials was unreliable and plagued by significant electro-mechanical problems. During clinical trials, over 30% of the inhalers failed. One problem was that a light which came on to indicate that the medication dose had been successfully delivered operated erratically and did not consistently turn on due to a defect in a printed circuit board in the product. A second defect was that the small battery-operated motor in the product to drive a fan to push the medication dose into the patient did not reliably turn on upon inhalation as it was supposed to. Dura was unable to fix these problems prior to commencing Phase III clinical trials. Dura was conducting its Phase III clinical trials with versions of Albuterol Spiros that had these defects and, in fact, changed the device during clinical trials. Dura knew this would invalidate the Phase III clinical trials.

97. Dura also discovered serious problems with the stability of Albuterol in 1996 even before Phase III clinical trials began. Once Albuterol was removed from its foil pouch container, as a dry powder it is subject to humidity and temperature problems and degradation. To address stability concerns, Dura conducted in-house temperature and humidity aging where Albuterol was aged for fixed intervals at 25 degrees Celsius and 75 percent relative humidity under industry and FDA guidelines. During this testing, Dura

determined that Albuterol was unstable when aged and subject to clumping which reduced its efficacy when exposed to humidity.

98. Defendants knew, based on their prior experience with the FDA and the medical device industry, that the FDA would not approve an NDA for an unreliable product and unstable drug. For example, during clinical trials, Dura experienced an early return rate exceeding 30% for the Spiros device. Industry standards dictated that an NDA not be filed unless the early return rate was 1% or less. Defendants Garner, Prettyman, Spath, Woodbury and Brown were informed during executive management meeting held every Monday from 8:00 to 10:00 a.m. of the problems encountered during the Phase III clinical trials and of Albuterol's stability problems. Furthermore, defendants Garner and Prettyman attended Research and Development meetings, also held weekly, during which the Spiros device development team presented Phase III clinical trial results and stability test results. Minutes were also generated from these meetings and circulated to senior management.

99. To address the reliability problems plaguing the Spiros device during clinical trials, Dura decided to modify the device while the trials were ongoing. All device modifications had to be approved by defendant Prettyman and others in his Regulatory Affairs department. Dura also kept careful records of the different configurations of the Spiros device labeled Rev D or Rev G. All modifications were documented in the clinical trial results and each test on each configuration was analyzed independently in a separate report. The Senior Project Engineer, Mike Ligotke, and

Project Leader, Linda Gieschen, were responsible for drafting these reports.

100. Defendants were also aware of the reliability problems plaguing the Spiros device and the Albuterol stability problems from the Eisele List presented to senior management during an executive management meeting in 10/96. Bob Eisele, Vice President of Product Development, prepared a list that was contained in a 5-6 page document which set forth necessary items to be addressed before an NDA could be properly submitted. In fact, through the Eisele List, Dura's engineers recommended that further development of the Spiros device be completed and the stability of Albuterol be established before the NDA was submitted. Thus, senior management, including defendants Garner, Prettyman, Spath, Woodbury and Brown, were informed of these problems even before they were revealed during clinical trials. Defendants ignored Dura's engineers and proceeded with clinical trials without fixing these issues.

101. Furthermore, defendants Garner and Prettyman attended a pre-filing meeting with the FDA in 5/97 in the FDA's offices in the Washington D.C. area. During that meeting, the FDA informed Dura that it was concerned with the Spiros device's reliability and with Albuterol's stability. Defendants' scienter is also demonstrated through their regular attendance of the weekly Research and Development meeting to discuss the Spiros device. At one such meeting, shortly before the pre-filing meeting with the FDA, defendant Garner asked the Spiros development team about the inhaler's reliability. During that meeting, the Spiros development team again informed defendants Garner and Prettyman that over 30% of the inhalers failed during clinical trials.

102. On 7/25/97, Dura sold $287.5 million in convertible notes with the help of Merrill Lynch. This was the largest securities offering in Dura's history.

103. On 8/11/97, Vector issued a report on Dura after discussions with Garner and Newman during the 7/97 convertible debenture Roadshow conferences and which was based on and repeated information provided by them. The report stated:

> We still do not believe that Spiros is totally factored into the current stock price. An NDA filing for the first Spiros product, for albuterol, should occur in the second half of this year ***with a market launch expected in the second half of 1998***.

104. On 8/19/97, Piper Jaffray issued a report on Dura after discussions with Garner and Newman which was based on and repeated information provided by them. The report stated:

> • Spiros is on track for a late 1998 launch. . . .
>
> • The convergence of these two arms of Dura's strategy upon the launch of Spiros ***will be a watershed event for the company, marking Dura as a leader in the respiratory pharmaceutical market.***

* * *

> Spiros has outstanding potential as a drug inhalation device. . . . The Spiros system . . . ***possesses significant advantages over alternative inhalers currently marketed or in development***. We expect Dura to file a new drug application (NDA) relating to a Spiros formulation of albuterol (the most widely prescribed asthma drug) this fall and receive approval in the fall of 1998.

105. On 9/11/97 - 9/12/97 Piper Jaffray, Vector and Montgomery Securities issued reports on Dura after discussions with Garner and Newman, each of which was based and repeated information provided by them. The 9/11/97 Piper Jaffray report stated:

> Second, Spiros will likely begin to account for more of Dura's valuation as the filing of the Spiros albuterol NDA in the next couple of months brings Spiros into the limelight.

The 9/11/97 Vector report stated:

> We expect Spiros albuterol to be launched in the second half of 1998 when we estimate it will generate $20 million in sales.

The 9/12/97 Montgomery Securities report stated:

> Spiros albuterol is expected launch in 1998 with anticipated sales of nearly $50 million in 1999. We also anticipate launch of Spiros beclomethasone in 1999 and Spiros ipratropium in 2000.

106. On 10/8/97, Dura representatives appeared at the UBS Life Science Conference. The Company revealed that an upcoming NDA filing for its first Spiros respiratory product line was expected "'within days.'" As reported by UBS, Dura further "presented compelling market share data with respect to Ceclor CD's continuing progress in the U.S. cefaclor cephalosporin franchise. Moving into the seasonal flu season and reflecting increased promotional support behind the brand, Ceclor CD registered nearly a three-point sequential increase in market share between August to September."

107. By 10/8/97, Dura's stock traded at $52-1/4 – its then all-time high price. On 10/10/97, Dura announced it was going to exercise its option to buy Spiros I's stock for Dura stock and was going to launch Spiros II via the sale of units to the public, including warrants to buy Dura stock.

108. On 10/8/97, UBS issued a report on Dura which was based on and repeated information provided at the UBS Life Science Conference and in conversations with Garner and Newman. The report stated:

> Dura Pharmaceuticals at the UBS Life Science Conference indicated that an upcoming NDA filing for its first Spiros respiratory product line . . . was expected "within days." This regulatory filing reinforces our confidence in a late-1998 commercialization of this new dry powder inhaler system, representing the first of three Spiros product lines scheduled for steady roll-out over the 1998-2000 period.

109. Defendants' statement to and repeated by securities analysts during conference calls, one-on-one sessions and analyst conferences between 8/11/97 and 10/8/97, as set forth in ¶¶103-106, 108 above, regarding the imminent filing of the NDA for Albuterol Spiros were false and misleading for the reasons set forth in ¶¶96-101.

110. Defendants' scienter of the falsity of these statements is set forth in ¶¶96-101.

111. On 10/14/97, Dura reported better-than-expected Q3 1997 results via a release headlined and stating:

> DURA PHARMACEUTICALS REPORTS RECORD EARNINGS FOR THIRD QUARTER 1997
>
> Dura . . . today reported record earnings for both the third quarter and nine months year-to-date of 1997, compared to the same periods last year.
>
> Net income for the third quarter ended September 30, 1997 totaled $11.3 million, or $0.24 per share, on revenues of $43.3 million compared to net income of $5.8 million, or $0.14 per share, on revenues of $25.9 million for the third quarter ended September 30, 1996. . . .
>
> The increase in revenues was primarily the result of growth in sales of respiratory pharmaceuticals, which rose 91% to $36.1 million

in the third quarter of 1997 compared to $18.9 million in the third quarter of 1996. Pharmaceutical sales growth is principally attributable to the impact of new product acquisitions and introductions, such as Ceclor® CD (cefaclor extended release tablets) and Nasarel® . . . and the expansion of the sale force . . . .

* * *

"We are pleased with Dura's sales performance in the third quarter of 1997, particularly in light of the seasonal slow-down that we typically experience in the summer quarter," stated Cam L. Garner, Dura's Chairman, President and CEO.

112. In a follow-up conference call on 10/14/97, Dura management continued to support the mistaken belief that it was experiencing strong sales. As reported by Vector on 10/15/97:

> * Of note, during the conference call, management suggested that, excluding acquisitions, earnings for 1998 could run in the "low $1.40's range". . . .
>
> * * *
>
> As for the sales force expansion, the company projects that it will have 300 sales reps by the end of the year and 350 reps at the point that Spiros Albuterol is launched.

113. On 10/14/97-10/15/97, Dura's stock reached its all-time high of $53.

114. The statements regarding Dura's Q3 1997 results were false and misleading when issued. The true but concealed facts were:

(a) Sales of Dura's major drug products were flat or declining, especially Ceclor CD, whose sales levels were dropping throughout the Class Period;

(b) Dura was encountering serious and persistent problems with its sales force which was inadequately trained, was suffering from very high turnover and was insufficient in number and skill to adequately market Dura's drug products, including Ceclor CD, Keftab and Rondec;

(c) In order to cover up the sales shortfalls described above, Dura was engaging in a subterfuge to artificially inflate its revenues and EPS by shipping excessive amounts of Ceclor CD and other products to wholesalers, who were enticed to take the product by price discounts, extended payment terms and/or other incentives. As a result, Dura's Ceclor CD and other product inventories in the distribution channel were greatly in excess of the normal one-month supply. As a result of this practice, Dura's Ceclor CD sales were artificially inflated and Dura's insiders knew that as a result of the "borrowing" of millions of dollars of sales of Ceclor CD from future periods, Dura's sales of Ceclor CD would inevitably fall sharply once this practice stopped;

(d) Sales of Dura's Nasalide spray products were also poor and well below expectations;

(e) Dura's Rondec and Dura-Vent product lines were suffering very poor sales, declining so rapidly and performing so poorly that Dura would not be able to recover its remaining investment in Rondec from those sales; and

(f) Dura had falsified and artificially inflated its Q1 and Q2 1997 EPS by failing to take required write-downs on the carrying value of its investment in the Rondec product line, which were required because the sales of that product line had so declined and were so poor that Dura could not recover its remaining investment in Rondec.

115. Defendants had scienter of the false and misleading Q3 1997 results because Garner, Prettyman, Spath, Woodbury and Brown were the top executives of Dura. They ran Dura as "hands-on" managers, dealing with the important issues facing Dura's business, such as sales of its Ceclor CD/Keftab, Rondec, Nasalide/Nasarel and Dura-Vent products, the development of its new Albuterol Spiros product, the issuing of Dura's SEC filings, press releases and financial statements, Dura's investment in Rondec and the development and expansion of its sales force. Garner, Prettyman, Spath, Woodbury and Brown each attended the weekly executive management meetings from 8:00 to 10:00 a.m. every Monday.

116. Because increased sales of Ceclor CD/Keftab, Rondec, Nasalide/Nasarel and Dura-Vent products, the successful development of and substantial sales of Dura's Albuterol Spiros product, and the continuing sales of Dura's

core products were indispensable elements to Dura meeting its internally budgeted and publicly disseminated 1998 and 1999 revenue and EPS forecasts, defendants constantly monitored each of these key factors affecting Dura's business.

117. Each of the Individual Defendants, because of their top executive positions with Dura and involvement in the day-to-day management of its business, actually knew from internal corporate documents and conversations with other corporate officers and employees and their attendance at management and Board meetings, the adverse non-public information about the poor sales of Dura's Ceclor CD/Keftab, Rondec, Nasalide/Nasarel and Dura-Vent products, the serious problems in the development of Dura's Spiros drug development system, Dura's falsification of its reported Q3 1997 EPS, and Dura's deteriorating revenue and EPS prospects.

118. The Dura Defendants closely monitored the performance of Dura's business via internal reports generated on a daily, weekly and monthly basis. Among the specialized reports prepared were drug-by-drug sales volume summaries, year-over-year sales volume comparisons of each Dura product, sales volume comparisons of Dura drugs to competitor drugs, sales revenue reports, and daily, weekly and monthly reports on prescription volumes, competitor prescription volumes, and market share. On a monthly basis, Dura's Information Technology department, after receiving information from IMS, a service that tracks prescription drug sales, would prepare reports comparing actual versus planned sales of Dura's drug products. Through such reports, which were prepared for and disseminated by defendant Spath,

defendants were kept apprised of Dura's drug sales and knew that such sales were below plan and insufficient for Dura to achieve continued growth in sales and earnings.

119. The monthly sales reports showed, for example, that Ceclor CD sales began dropping around March-April 1997, and significantly worsened during the summer of 1997. These reports showed that sales were 25-40% below internal projections at that time. Monthly sales reports showed that Ceclor CD sales dropped from 47,288 in 3/97 to 39,808 in 5/97 to 24,797 in 7/97.

120. The Finance Department also distributed monthly financial reports comparing Dura's actual financial results to projected results. Thus, each Dura Defendant was apprised of the sales of every Dura product so that they knew where Dura stood in terms of the sale of and demand for its products as well as Dura's actual results compared to plan. Thus, the Dura Defendants were constantly aware of the prescription rate for its products and knew that excess inventory was building up with distributors and that Dura was not recouping its investments in certain drugs.

121. Dura recognized revenue on the sale of a product when it shipped the product to drug wholesalers. These drug wholesalers in turn resell the drug to pharmacies, drug chains or even individual physicians. Dura did not publicly disclose to analysts or investors sales of each of its various drug products, *i.e.*, shipments to wholesalers. Thus, analysts and investors were completely dependent upon what Dura told them regarding sales of these products, as shipment-to-wholesaler data is not publicly available. While the number

of prescriptions written for a given drug is publicly available on a periodic basis, this information does not disclose the rate at which drugs are being shipped to wholesalers, as that information is not publicly available. Analysts and investors did not know that Dura was shipping amounts of Ceclor CD to wholesalers well in excess of the amount justified by or necessary to keep pace with current prescription levels and thus Dura had created vastly excessive amounts of inventory of Ceclor CD in the distribution channel. While Dura reported higher revenue and EPS during each of the quarters of 1997 from these shipments, these excessive inventory levels would eventually have to be worked off, causing sales and earnings to plummet.

122. On 10/14/97-10/15/97, Oppenheimer, Alex. Brown, Vector and Hambrecht & Quist issued reports on Dura which were based on and repeated information provided in the 10/14/97 conference call and in follow-up conversations with Garner or Newman. The 10/14/97 Oppenheimer report stated:

> [T]he company's second business, developing a proprietary drug delivery system for drugs administered by the inhalation route, moves ever closer to commercialization. Here, the company's Spiros dry powder, non-aerosol system will shortly be submitting its first marketing applications to the FDA for albuterol, the most widely-used inhaled asthma medicine. The expected November filing keeps the company on track for initial commercial sales of this product at the end of 1998. . . .

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The 10/15/97 Alex. Brown report stated:

> The Company plans to file its first NDA for Spiros albuterol in November 1997, and it could be on the market in late 1998, with initial projected sales of $10 million expected to grow to over $55 million by 2000, further leveraging Dura's growing marketing infrastructure. A Phase III trial of Spiros beclomethasone, an inhaled steroid for the treatment of asthma, has just begun enrolling patients, and an NDA could be filed in late 1998.

The 10/15/97 Vector report stated:

> [W]e expect that the company will file an NDA for Spiros Albuterol in November of this year and launch the product in the second half of 1998. Dura's confidence in this product has been clearly communicated by the recent announcement that Dura will buy Spiros Development Corp. . . . Dura is targeting the second half of 1999 for approval of Spiros beclomethasone.

The 10/15/97 Hambrecht & Quist report stated:

> Spiros and Pipeline Update
>
> * * *
>
> ***Spiros albuterol has apparently performed well in clinical trials***. . . . An NDA filing is expected before the end of 1997. We estimate approval in late 1998, with a launch in early 1999. . . .

Appendix C

123. On 11/10/97, Dura stated in a release:

> Dura . . . on behalf of Spiros Development Corporation (Spiros Corp.) today announced that it has submitted a new drug application (NDA) with the FDA for Albuterol Spiros™. . . . Three pivotal studies in addition to a number of dose finding and performance verification studies were conducted for the submission.
>
> * * *
>
> "Submission of the first Spiros™ NDA is an exciting milestone for Spiros Corp. and Dura," commented Cam L. Garner, Dura's Chairman, President and CEO. "It represents a significant advancement in the execution of our strategy to establish Dura as a leader in the respiratory marketplace."

124. On 12/17/97, Dura and Spiros II sold 5.5 million Spiros II units at $16 per unit, raising $88 million in needed new capital. Each unit sold consisted of one share of stock of Spiros II and one warrant to purchase one-fourth of one share of Dura common stock.

125. Dura's announcements regarding the submission of the Spiros delivery device NDA to the FDA on 11/10/97 and the completion of the Spiros II offering on 12/17/97 and statements made to and repeated by securities analysts regarding the NDA for Spiros on 10/14/97 and 10/15/97 were false and misleading and made with scienter for the reasons

set forth in ¶¶96-101. The falsity of these statements and defendants' scienter thereof is also demonstrated by the internal dissension existing at Dura in 10/97 between defendants themselves about whether to even file the NDA for the Spiros device. In late October or early November 1997, a meeting was held to discuss the NDA filing. Defendants Garner and Prettyman along with Kabakoff and Damecki attended the meeting during which Prettyman made it very clear that he did not want to file the NDA, for which his department, Regulatory Affairs, was responsible. Prettyman was against filing the NDA because, based on his prior experience – Prettyman worked for the FDA for over ten years prior to working for Dura – he knew the NDA would not be approved by the FDA. Despite this, defendant Garner and Kabakoff forced Prettyman to file the NDA. Shortly after this meeting, the NDA was submitted on 11/10/97.

126. Defendants' scienter of the serious problems plaguing the reliability of the Spiros device causing over 30% of the devices to fail and thus their scienter of the falsity of the NDA filing announcement, the Spiros II funding and their statements to analysts is also demonstrated by the defendants' decision to retain Wyle Labs to conduct HALT. Senior executives at Dura were so concerned about the inhaler's reliability problems and the mid-clinical-trial modifications that were made to the device that the decision was made to contract with an outside testing facility, Wyle Labs, to conduct HALT. HALT are extreme condition tests designed to identify potential operational failures in a device. Dura contracted with Wyle Labs to conduct these tests while Phase III clinical trials were still ongoing. Ed Dusel, Senior Engineering Development Manager, managed the Wyle Lab testing and

Mike Ligotke, Senior Project Manager, analyzed the test results. Dura gave Wyle Labs inhaler configurations Revs D, G, H, and J of the device. Dura used the HALT results from Wyle Labs in a 9/98 amendment to Dura's NDA to try to demonstrate that the different inhaler configurations tested in Phase III clinical trials as well as the concurrent HALT resulted in progressively improved operational reliability. Thus, defendants knew that Dura's Phase III clinical trials, upon which the NDA was based, were inadequate to obtain FDA approval.

127. Defendants' scienter of the falsity of these statements is also demonstrated by the massive insider bailout of Dura stock immediately after defendant Prettyman lost the power struggle over whether to file the NDA to defendant Garner. On 11/5/97, defendant Prettyman sold 15,000 shares and pocketed over $728,000 – his only selling during the Class Period – despite his expressed belief that the Spiros device NDA would not be approved. In total, while Dura's stock continued to trade at artificially inflated prices near its all-time high, between 11/3/97 and 1/6/98, Garner, Woodbury, Prettyman, Newman, Spath, and Cook unloaded 197,607 shares of their Dura stock, pocketing $9.2 million in illegal insider-trading proceeds.

128. On 1/20/98, Dura reported better-than-expected Q4 1997 results via a release stating:

> Dura . . . today announced results for the fourth quarter and year ended December 31, 1997. Dura reported record revenues of $53.5 million and $181.3 million for the quarter and the full

year, respectively. . . . If . . . one-time charges were excluded, Dura would have reported record net income of $18.0 million, or $0.37 per share in the quarter, and $47.4 million, or $0.99 per share for the year, compared to a net income of $9.9 million, or $0.22 per share for the fourth quarter of 1996 and $24.3 million, or $0.60 per share for the full year 1996. . . .

* * *

Revenues from the sale of respiratory pharmaceuticals rose 89% to $150.5 million in 1997 compared to $79.6 million 1996, due largely to product acquisitions and the increased productivity of the Company's expanded sales force. . . .

Commenting on the results for the year, Dura Chairman, President and Chief Executive Officer Cam L. Garner stated, "During the past year we significantly strengthened both the pharmaceutical product marketing and the Spiros development arms of our business . . . We have continued to demonstrate our capabilities as a respiratory marketing force as shown by the growth of our Ceclor(R) CD market share of the oral solid cefaclor market from 8% at the beginning of 1997 to 25% by year-end.

129. The statements regarding Dura's Q4 1997 results were false and misleading and made with scienter for the same reasons stated in ¶¶114-121.

130. On 1/20/98-1/21/98, Vector, Merrill Lynch, Oppenheimer and Hambrecht & Quist issued reports on Dura which were based on and repeated information provided in a 1/20/98 conference call following the Q4 1997 press release and in follow-up conversations with Garner or Newman. The 1/20/98 Vector report stated:

> A late 1998/early 1999 time frame for a launch of ***Spiros albuterol***, now with the proposed trade name ***AlSpiros, was confirmed by the company***.

The 1/20/98 Merrill Lynch report stated:

> In the meantime, we expect steady progress with the FDA's review of the Spiros Dry Powder inhaler with albuterol, (AlSpiros) the most prescribed asthma drug. ***Final approval is likely by year end***. . . .
>
> . . . By 2002, we believe that Spiros based products could contribute up to 50% of corporate revenue.

The 1/20/98 Oppenheimer report stated:

> [T]he company's Spiros dry-powder, non-aerosol system will shortly be reviewed by [the] FDA following its acceptance of Dura's first marketing

application to the FDA for albuterol, the most widely-used inhaled asthma medicine. The recent FDA acceptance of this filing keeps the company on track for the product's approval by the end of 1998.

The 1/21/98 Hambrecht & Quist report stated:

> Spiros albuterol (now called AlSpiros) is the front-runner, with an NDA filed in November, and an acceptance of that filing issued by the FDA last week, ***everything is on schedule (pending FDA approval) for an early 1999 launch***. . . .

131. On 1/29/98, Merrill Lynch issued a report on Dura which was based on and repeated information provided in the 1/20/98 conference call and in follow-up conversations with Garner or Newman. The report stated:

> [W]e expect steady progress with the FDA's review of the Spiros Dry Powder inhaler with Albuterol, (AlSpiros) the most prescribed asthma drug. ***Final approval is likely by year end***.

132. By early 2/98, Dura's stock had begun to decline in price. Dura's top insiders nevertheless continued to reassure analysts that Dura's fundamentals remained strong.

133. Each of defendants' statements made to securities analysts between 1/20/98 and 1/29/98 described above were false or misleading when issued. Assuring investors that approval of the NDA was likely during 1998 was false and

misleading as defendants knew that the clinical data submitted in support of the NDA showed that the inhaler had a 30 percent failure rate and that the data was inadequate to demonstrate Albuterol's stability. The falsity of these statements, and defendants' scienter thereof, is further demonstrated by the reasons set forth in ¶¶96-101, 125-127.

134. On 2/24/98, after the close of trading, Dura shocked the market by revealing that it was experiencing slower Ceclor CD and Nasarel/Nasalide sales and needed to increase Dura's sales force from 270 representatives to over 450. In a conference call with analysts, Dura admitted that both increased competition from other antibiotics, as well as a need for its sales force to increase physician calls and sampling rates, was adversely affecting Ceclor CD's sales. Dura hoped that its new, much larger sales force would now be able to properly market Ceclor CD, and correct the sales decline. Investors were stunned by these revelations. Dura's stock price collapsed from $39-1/8 on 2/24 to $20-3/4 on 2/25. Analysts were furious over having been lied to. Alex. Brown analyst Ryan wrote:

> * Management credibility has been severely damaged by this announcement, particularly in light of recent investor conference presentations exuding confidence on the Company's fundamentals. . . .
>
> * * *
>
> Our confidence in management and their credibility with us has been greatly diminished.

> As recently as one month ago, we reviewed our model with the Company line by line and were guided to higher Ceclor CD estimates. In our opinion, not too much could have changed between now and then, and we believe that this revenue shortfall is not new news to Dura, but frankly, comes as a surprise to us.

135. During the balance of 1998, Dura's business performed miserably. In a 4/16/98 conference call with analysts, Dura ***admitted*** that, at least by 12/97, the wholesale channels had been clogged with many months of excess inventory. Dura also revealed that sales of its Keftab, Dura-Vent and Rondec products were plummeting – so much so that by mid-98 Dura was forced to begin to create a new entity, DJ Pharma, Inc., to acquire these drugs so Dura would not be burdened with their losses. Dura also admitted its sales force was inadequate and had been plagued by very high turnover and that this was contributing to the poor sales of its drug products. On 10/5/98, analyst Ryan wrote:

> There was excessive inventory buildup in Ceclor CD among wholesalers in late 1997, and the Company asserts that this hurt 1998 sales. Management believes that the buildup has decreased, with inventory levels now down to one month's supply (versus five months earlier in the year). . . .

136. On 11/3/98, Dura revealed that the FDA had rejected the Albuterol Spiros NDA because the Spiros device was not reliable because of its unacceptably high failure rate

and because Dura had provided insufficient data to demonstrate Albuterol's stability. In other words, the FDA rejected the Albuterol Spiros NDA for the same reasons set forth in the Eisele List in 10/96, revealed during Dura's in-house stability testing completed before clinical trials, revealed during clinical trials, and identified by the FDA in the 5/97 pre-filing meeting, which prompted defendant Prettyman to urge that the NDA not be filed in the late 10/97, right before it was actually submitted. The FDA requested additional clinical trials on the Spiros inhaler in order to ensure inhaler reliability and replicate the clinical outcomes of the initial trials. The FDA also requested the resolution of a number of chemistry, manufacturing and control issues. Dura claimed that the FDA's letter raised no issues on the clinical data with the inhaler filed in the NDA demonstrating therapeutic comparability of Albuterol Spiros with Ventolin® (albuterol) MDI using standard lung function measures. But then, on 11/6/98 – just three days later – the FDA issued a "notice of violation" to Dura. "[T]he Division of Drug Marketing, Advertising and Communications (DDMAC) . . . found that Dura's press release sent a message that 'misleadingly minimizes the fact that Dura must conduct a completely new clinical data [study]. . . .'" Upon receiving the FDA letter, Dura removed the press release from its Web site. Ultimately, Dura completely abandoned the development of the Spiros device for use with Albuterol because Dura could never demonstrate that drug's stability.

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DURA'S FALSE FINANCIAL REPORTING DURING THE CLASS PERIOD

137. In order to overstate its earnings for the interim quarters and year-end 1997, Dura violated Generally Accepted Accounting Principles ("GAAP") and SEC rules by failing to properly report the value of its investment in its Rondec product.

138. Dura reported the following financial results during the Class Period:

	Qtr-end 3/31/97	Qtr-end 6/30/97	Qtr-end 9/30/97	Qtr-end 12/31/97	Year 12/31/97
Revenues	$40.9 M	$43.6 M	$43.3 M	$53.5 M	$181.3 M
Net Income	$ 8.8 M	$ 9.2 M	$11.2 M	$18.0 M*	$ 47.4 M*
EPS	$.19	$.20	$.24	$.37*	$.99*

* Excluding one-time charge

139. Dura included its results for Q1, Q2 and Q3 1997 in Form 10-Qs which were filed with the SEC. The Form 10-Qs, signed by Newman, represented that the financial statements included all adjustments which are, "in the opinion of management, necessary for fair presentation."

140. These financial statements and the statements about them were false and misleading, as such financial information was not prepared in conformity with GAAP, nor was the financial information "a fair presentation" of the Company's

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operations due to the Company's improper accounting for its investment in Rondec, in violation of GAAP and SEC rules.

141. GAAP are those principles recognized by the accounting profession as the conventions, rules and procedures necessary to define accepted accounting practice at a particular time. Regulation S-X (17 C.F.R. §210.4-01(a)(1)) states that financial statements filed with the SEC which are not prepared in compliance with GAAP are presumed to be misleading and inaccurate. Regulation S-X requires that interim financial statements must also comply with GAAP, with the exception that interim financial statements need not include disclosure which would be duplicative of disclosures accompanying annual financial statements. 17 C.F.R. §210.10-01(a).

142. Dura had acquired the rights to the Rondec product line (prescription cough/cold drugs) from Abbott Laboratories on 6/30/95, making an investment in the product of more than $35 million. Dura selected an amortization period for this investment of 25 years. During the Class Period, sales of this product were extremely disappointing and not nearly enough to justify the investment. Nonetheless, in order to avoid an adverse impact on Dura's earnings, the defendants caused the Company not to write down the value of this investment, nor to even accelerate the amortization of this asset, in violation of GAAP.

143. GAAP, as set forth in FASB Statement of Financial Accounting Standard ("SFAS") No. 121, Accounting for the Impairment of Long-Lived Assets, requires that entities

evaluate the recoverability of long-lived assets to determine whether an asset is impaired. Where impairment is demonstrated, a loss shall be recorded to reflect the impairment. *See* SFAS No. 121, ¶¶4-11.

144. During the Class Period, Dura focused its sales efforts on Ceclor CD and Keftab, to the detriment of Rondec, sales of which were extremely disappointing and lagged well behind other products. Dura was required, pursuant to GAAP, to continually evaluate the carrying value of unamortized balances of intangible assets. In fact, in both its 1996 and 1997 financial statements, the Company represented that it did so. If Dura actually did evaluate the carrying amount of its investment in Rondec, it would have seen that the carrying balance of this asset was not justified by the revenue being generated by it. However, in order to report favorable earnings, Dura failed, in violation of GAAP, to record any impairment charge for this investment. Dura also failed even to accelerate (shorten the amortization period) the amortization of this asset which was amortized over an extremely long period, 25 years, for a prescription drug.

145. Ultimately, Dura could not ignore how poorly Rondec was selling in relation to the investment shown on the Company's balance sheet. In order to avoid taking a write-off, in 7/98, Dura formed an affiliate company (DJ Pharma) to co-promote Rondec, partially with money provided by Dura. As a result, the valuation of Rondec was not (at least temporarily) Dura's problem, as it was on the books of DJ Pharma. In 12/98, however, when the DJ Pharma transaction had not yet finalized, Dura was forced to reconsolidate DJ Pharma back into Dura. Finally, Dura acknowledged what

its insiders had known for at least 18 months: the Rondec investment was severely impaired. Dura has now taken a $28 million charge for the impairment of Rondec. This charge represents over a third of all the net income (excluding special charges) Dura reported during the Class Period.

146. Further, the undisclosed adverse information concealed by defendants during the Class Period is the type of information which, because of SEC regulations, regulations of the national stock exchanges and customary business practice, is expected by investors and securities analysts to be disclosed and is known by corporate officials and their legal and financial advisors to be the type of information which is expected to be and must be disclosed.

DEFENDANTS' SCIENTER

147. Each defendant is liable for making false statements or for failing to disclose adverse facts while selling Dura stock and/or for participating in a scheme which operated as a fraud or deceit on purchasers of Dura stock. Each defendant knowingly made false and misleading statements or participated in a fraudulent scheme and course of business that operated as a fraud on purchasers of Dura stock and damaged class members and/or sold Dura stock while concealing material adverse information.

148. The Individual Defendants, because of their positions as high-ranking officers and/or directors with the Company, possessed the power and authority to control the contents of Dura's quarterly and annual reports, SEC filings, press releases and presentations to securities analysts, money

and portfolio managers and institutional investors, *i.e.*, the market. Each Individual Defendant participated in drafting and was provided with copies of the Company's reports, SEC filings and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them but not to the public, each of these defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations which were being made were then materially false and misleading. Despite their duty not to sell their Dura stock under such circumstances, defendants nonetheless did so. The Individual Defendants are liable for the false statements pleaded herein, as those statements were each "group-published" information, the result of the collective action of the Individual Defendants.

149. As the top officers and/or directors of Dura, defendants controlled the dissemination of, and could thereby falsify, information about Dura's business and finances which reached the investing public and affected the price of Dura's stock. Also, their insider corporate positions gave them knowledge about Dura's business that was not public – creating the opportunity for them to make false public statements, artificially inflate Dura's stock price and take advantage of their non-public information by using their corporate positions at Dura.

150. After reaching the all-time high price of $47-7/8 on 12/31/96, Dura stock declined sharply, falling to $27-7/8

on 4/14/97. This decline was due to concern over the ability of Dura's new Ceclor CD/Keftab drugs to continue to drive Dura's EPS growth and the ability of Dura to successfully introduce Albuterol Spiros by late 1998 or early 1999. This decline created tremendous problems for Dura's executives. By early 1997, they were already taking steps to complete a major convertible debt offering for Dura. They also knew during 1997 that Spiros I would exhaust its existing resources and that Dura would have to exercise its option to repurchase Spiros I stock and finance a new follow-on Spiros II entity to continue to pay for the development of the Spiros drug delivery system. The creation of a new Spiros II entity would require a public offering of securities that included warrants to buy Dura stock. Also, the value of the Dura insiders' existing stock options to purchase Dura stock at $29.63-$37.63 per share had been completely wiped out by the 1997 stock decline, and the value of the insiders' other options was greatly reduced. Finally, the yearly cash bonuses of Dura's top executives – which could amount to 100% of their base salaries – were dependent upon Dura's reported EPS and stock price performance. For all of these reasons, it was imperative to Dura's insiders that they drive Dura's stock price higher to enable Dura to raise needed capital, to exercise Dura's option to purchase Spiros I's stock by issuing as few shares as possible, to successfully complete a public offering of Spiros II securities, to restore the value of their stock options so that they could unload millions of dollars of the Dura stock they owned before the stock collapsed, and to allow them to be paid large year-end 1997 cash bonuses based on Dura's 1997 EPS and a strong 1997 stock performance.

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151. Thus, in 4/97 as Dura stock fell to as low as $27-7/8, the defendants repriced thousands of their $37.63 per share options – to just $25 per share – as follows: Garner 150,000 options, Brown 40,000 options, Newman 40,000 options, Prettyman 35,000 options, Spath 40,000 options, and Woodbury 30,000 options. Defendants also commenced a concerted publicity campaign to persuade investors that Dura's portfolio of older drug products was still selling very well, that Ceclor CD/Keftab were doing even better in the marketplace than had been anticipated and that Dura was successfully completing the development and clinical trials of its Albuterol Spiros product, such that it would likely result in that product reaching the market by late 1998/early 1999, generating millions of dollars of revenue and profits for Dura.

152. Dura's executive compensation structure also provided an additional motive for the Individual Defendants to participate in the fraud. Defendants' 1996-1997 cash bonuses, based on achieving EPS growth targets, are shown below:

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153. Defendants' fraudulent scheme was a success – for them. The Individual Defendants also sold 390,374 shares of their Dura stock at artificially inflated prices, pocketing $16.8 million in illegal insider-trading proceeds. Dura and its Spiros entities raised over $375 million by selling securities to the public and Dura was able to exercise its option to repurchase Spiros I stock for Dura stock at inflated prices.

INSIDER SELLING

154. While Dura's top insiders were issuing favorable statements about Dura, the Individual Defendants sold 386,233 shares of Dura stock, for more than $16.6 million – 82% of their collective holdings of Dura stock – to personally profit from the artificial inflation in Dura's stock price. Notwithstanding their access to material non-public information and their duty to disclose same before trading in Dura stock, they sold significant amounts of their Dura stock at artificially inflated prices at highly suspicious times. Defendants' selling occurred shortly after the pre-filing meeting with the FDA in 5/97 as insiders sold 188,626 shares for proceeds exceeding $7.3 million between 5/12/97 and 7/22/97. Defendants' massive bailout continued at the same time Dura was filing the Spiros device NDA, when the stock was at an all-time high, as defendants sold 197,607 shares for proceeds exceeding $9.2 million between 11/3/97 and 1/6/98. The later selling is highly suspicious given the internal disagreement between defendants themselves whether to even file the NDA. For example, after telling defendant Garner and other senior executives that he was against filing the NDA because there was insufficient data to obtain FDA approval, defendant Prettyman nonetheless sold 15,000 shares on 11/5/97 for $728,100 in proceeds. Defendants' insider selling during the Class Period is detailed below:

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155. Defendants' insider trading occurred during a time period when Dura was supposedly enjoying a period of exceptional business success and was poised to achieve strong revenue, net income and EPS growth, not only in the next quarter or two, but during the next few years at least. As a result, if these exceptionally favorable present conditions and future prospects actually existed, Dura stock should have been poised for a major advance over the next few years as was being predicted by several prominent investment firms that followed Dura and whose analysts were relying upon the information provided them by the Individual Defendants. Nevertheless, the Individual Defendants unloaded 386,233 shares of Dura stock for $16.6 million in illegal insider-trading proceeds at the beginning or during the early stages of this supposed exceptionally favorable period. The Individual Defendants did this because they knew their statements about the current strong condition of and successes with Dura's business, as well as its strong future prospects, ***were false*** and they were concealing the serious negative conditions in Dura's business detailed herein. By selling off the large amounts of Dura stock when they did, the Individual Defendants not only personally profited from the artificial inflation in the price of Dura stock that their false and misleading statements and manipulations had created, but they also avoided losing millions when the stock declined.

Name and Principal Position	Year	Annual Compensation Salary	Bonus
Cam L. Garner	1997	$396,519	$475,000
Chairman, President & CEO	1996	$347,654	$610,000
Walter F. Spath	1997	$210,808	$140,000
Senior VP-Sales & Marketing	1996	$201,538	$190,000
James W. Newman	1997	$200,769	$140,000
Senior VP-Finance & Administration & CFO	1996	$190,039	$190,000
Charles W. Prettyman	1997	$191,116	$140,000
Senior VP-Development & Regulatory Affairs	1996	$179,577	$190,000

NAME	DATE SOLD	SHARES SOLD	PRICE PER SHARE	PROCEEDS FROM SALE
Brown	05/21/97	39,383	$40.21	$1,583,590
		39,383		$1,583,590
Cook	05/23/97	20,000	$42.00	$ 840,000
	01/06/98	5,000	$47.06	235,300
	01/06/98	10,000	$47.00	470,000
	01/06/98	5,000	$47.13	235,650
		40,000		$1,780,950
Garner	05/12/97	60,000	$36.64	$2,198,400
	05/19/97	6,623	$38.75	256,641
	05/19/97	1,000	$38.75	38,750
	05/30/97	30,000	$39.76	1,192,800
	11/03/97	30,000	$48.63	1,458,900
	11/04/97	17,000	$48.13	818,210
	11/05/97	10,000	$49.31	493,100
		154,623		$6,456,801

Newman	07/22/97	1,620	$41.88	$ 67,846
	11/14/97	500	$46.00	23,000
	11/24/97	500	$46.00	23,000
	12/05/97	31,700	$45.69	1,448,373
	12/09/97	17,907	$46.25	828,199
		52,227		$2,390,417
Prettyman	11/05/97	15,000	$48.54	$ 728,100
		15,000		$ 728,100
Spath	05/15/97	20,000	$39.03	$ 780,600
	05/16/97	10,000	$38.69	386,900
	11/18/97	20,000	$45.45	909,000
		50,000		$2,076,500
Woodbury	11/14/97	7,000	$46.24	323,680
	11/17/97	28,000	$45.70	1,279,600
		35,000		$1,603,280

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156. This insider selling by the Individual Defendants was highly unusual, both in its timing and in its amount. The defendants who exercised options on Dura stock during the Class Period each sold 100% or close to 100% of the stock they acquired by option exercise. These sales came just after the purported successful introduction of major new product lines by Dura (Ceclor CD/Nasalide) that were supposed to push its earnings higher for several quarters, and while the market was expecting FDA approval of Dura's new Albuterol Spiros product in 1998. While the Individual Defendants also owned vested stock options which were not exercised, their stock sales were still significant in amount and unusual in timing, even considering their options holdings. The table below summarizes defendants' insider selling comparing sales to stock actually owned and total holdings, including vested options:

Dura Pharmaceuticals, Inc.

Class Period: April 15, 1997 - February 24, 1998

Insider	Class Period Sales/ Distributions	Sales Proceeds	Percent of Stock Sold (1)	Percent of Total Holdings Sold (2)
Brown, Julia R	39,383	$1,583,590	100%	36%
Cook, Joseph C. Jr.	40,000	$1,780,950	43%	29%
Garner, Cam L.	154,623	$6,456,801	67%	62%
Newman, James W.	52,227	$2,390,417	78%	34%
Prettyman, Charles W.	15,000	$728,100	100%	46%
Spath, Walter F.	50,000	$2,076,500	100%	32%
Woodbury, Mitchell	35,000	$1,603,280	100%	31%
Total:	386,233	$16,619,638		

(1) Includes common stock and options exercised and sold during the Class Period.

(2) Includes common stock, options and warrants exercisable.

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BLACK-SCHOLES OPTIONS VALUATION AS EVIDENCE OF SCIENTER

157. An analysis of the timing of an insider's exercise of stock options and sale of the underlying shares can provide clear and convincing evidence that these transactions were either irrational or based on non-public information. The analysis is based on the common sense foundation that executives will not irrationally, and needlessly, waste large amounts of their wealth. If the finder of fact is unwilling to believe that financially sophisticated executives, privy to all of a company's non-public information, would engage in dramatically irrational personal financial decisions, then a strong inference can be drawn that transactions were based on non-public information, and therefore were illegal.

158. The analytical tool used here is the universally accepted method for calculating the value of stock options, named for its authors, Black and Scholes, who earned the Nobel Prize for this now well-established methodology.[1] Options are valuable rights because the option allows its owner to preserve the opportunity for upside gain without any capital commitment and without any risk of loss. The Black-Scholes formula calculates the expected market value of any option based on several factors: stock price; exercise price of the option; expiration date of the option; volatility of the stock; and the risk-free rate of return. At any time prior to its expiration date the market value of any option has two components: (1) "intrinsic value," the amount of money that one could obtain by exercising the option as of today (stock price less the strike or exercise price of the option); and (2) "time value," the value from any potential

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increase in the stock price during the term of the option. The formula demonstrates that a rational investor in an environment of efficient markets, relying solely upon public information, would not exercise an option to purchase a non-dividend paying stock prior to the expiration date of the option. The reason for this conclusion is that an early exercise of an option to purchase forfeits the time value of the option between the date of exercise and the date the option expires.

159. Holding the option to maturity maximizes the holder's wealth, assuming that the holder makes transactions based only on public information. The rational executive will never forfeit more than a *de minimis* amount of this value because it is unnecessary to do so. Any desire for asset liquidity or diversification can be achieved by any number of financial instruments readily available and commonly used by executives. For example, executives commonly protect themselves from risk by the use of put options, call options, zero cost collars, and equity swaps. All these instruments are readily available, are commonly used, and can be obtained by a simple phone call to a broker. Similarly, information regarding these options is readily available to these executives through financial advisors and is part of the course work involved in obtaining business degrees. Further, such instruments are commonly used by executives in performing their duties.

160. Should the holder of an executive option exercise these options early, the Black-Scholes formula quantifies the resulting loss to the executive. The premature exercise of vested options, and its associated dollar cost to the Individual Defendants (as calculated by the Black-Scholes formula), can

be explained as rational, *i.e.*, to maximize the returns on their asset only if the Individual Defendants were in possession of material adverse undisclosed inside information. Those Individual Defendants would be willing to forego the time value of the option because they know that the value is based upon an artificially inflated stock price – a price that does not yet reflect the non-public adverse information on which the executive is basing his or her decision to exercise and sell his or her stock.

161. The Black-Scholes option pricing formula is widely accepted and used. Studies of executive pay regularly use the Black-Scholes formula to estimate the value of executive stock options. For example, the Black-Scholes formula has served as the basis for the following studies and analyses:

- *Los Angeles Times's* executive pay study conducted by Watson Wyatt Worldwide used the Black-Scholes formula.

- The 2000 CFO Compensation Survey undertaken by the consulting firm Towers Perrin utilized the Black-Scholes formula to value executive options.

- *The Wall Street Journal's* CEO Compensation Survey, conducted by William M. Mercer, Inc., one of the nation's leading consulting organizations also used the Black-Scholes formula to calculate the value of stock options.

- This same method was used by Deloitte & Touche to rank CEO pay at Dallas-Fort Worth's 100 largest public companies.

- A general overview of executive options published by Harvard University Graduate School of Business Administration, entitled "What You Need to Know About Stock Options," notes that some executives receive stock options under a "Fixed Value Plan." Under such a plan executives receive options of a predetermined value every year over the life of the plan. As noted, the options are valued in such plans using "Black-Scholes or similar valuation formulas."

- The nation's ranking expert on executive compensation, Graef Crystal, has argued vigorously for many years that all United States companies should use the Black-Scholes formula in determining the expenses associated with executive stock options. Crystal argues that the failure by some companies has caused top executive pay to escalate wildly out of control.

162. As a result, the Black-Scholes formula often is used by corporations to value executive stock options. For example, Gateway Inc., Adaptec Inc. and 3COM Corp. have reported in their proxy statements that they all recently used the Black-Scholes formula for valuing executive options. All in all, 12% of technology companies and 44% of non-technology companies use the Black-Scholes formula to valuate their options.

163. The Black-Scholes formula also is used by executives to value their own stock options. For example, the employment agreement for Gateway Inc.'s CEO Jeffrey Weitzen requires Gateway to pay Mr. Weitzen option grants worth $4.9 million as calculated using the Black-Scholes formula:

> Recurring Options. Commencing in calendar year 2000 and thereafter in each calendar year during the Employment Period, ***the Company will recommend to the Compensation Committee that the Executive receive, twice annually in accordance with the terms of the Plan (or any replacement plan therefor), an option grant (calculated using the Black Scholes formula of option pricing) that would be equivalent to a Black Scholes value of $4,876,000.*** For example, using the Black Scholes formula, if the stock price of Gateway common stock was $50/share at the time of the grant, the Executive would receive 160,026 shares of Gateway common stock ($4,876,000 divided by $30.47 being the Black Scholes value at $50/share, which equals 160,026 shares of stock).

Hence, such a formula is a necessity for executives to valuate accurately their own employment pay packages.

164. Using Black-Scholes in this case reveals that defendants exercised their options in a way which demonstrates their use and possession of inside, non-public information. As set forth above, the Individual Defendants

knew of facts that would result in Dura's financial results falling far short of the levels being forecasted. The defendants knew that the Company's failure to meet these forecasts would dramatically lower the price of Dura stock. Thus, defendants determined, based upon non-public, inside information, that exercising many of their options prior to the disclosure of the adverse, inside information would provide returns greater than holding the options beyond the time of disclosure of the adverse inside information. As a result, defendants prematurely exercised a vast number of employee stock options which no rational executive would have exercised absent knowledge of impending doom.

165. For example, on 11/5/97, Prettyman prematurely exercised options for 2,057 shares – options that would have expired more than nine years later. The total risk-adjusted value of these options on that day was $79,084. That is, were one to attempt to purchase such options at an options exchange or in an over-the-counter transaction, one would have paid approximately $79,084 to obtain options with rights similar to those held by Prettyman, and this value would be set based upon the information available to the public on that day. Nevertheless, Prettyman prematurely exercised his options and obtained only $48,422. Absent Prettyman's possession and use of inside information, Prettyman's transaction makes no rational sense, as he forfeited $30,663 of value by this early exercise.[2]

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2. The source of information for all of the calculations in this section are defendants' own Proxy Statements, Forms 3, 4, 5, and 144's filed with the SEC, publicly available risk-free interest rate data, publicly available volatility calculations for Dura stock, and publicly available Dura price data.

166. In contrast, Prettyman's otherwise irrational act is clearly rational when viewed as one based on inside information. The options that were valued using public information at $79,084 on the day he exercised the options (on 11/5/97), declined precipitously to $36,259[3] after the bad news was revealed (on 2/25/98). Hence, Prettyman's exercising of options, was, in fact, rational only if Prettyman used inside information. Indeed, Prettyman's use of inside information led him to realize more than a $12,000 profit over what he would have obtained had he held onto his options. Such trading is clearly suspicious and is designed to "'maximize the personal benefit from undisclosed inside information.'" *In re Silicon Graphics Sec. Litig.*, 183 F.3d 970, 986-87 (9th Cir.1999) (quoting *In re Apple Computer Sec. Litig.*, 886 F.2d 1109, 1117 (9th Cir. 1989)).

167. An analysis of some of defendants' other exercises of options reveals a similar pattern. As detailed below, numerous option exercises by defendants during the Class Period, when evaluated using publically available information, were irrational if based on publicly available information – because they constituted a sale of the options for only $0.60-$0.85 per dollar of actual worth:

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3. This number is the maximum value of the option - using the favorable 100-day volatility value on 2/25/98.

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Date	Number of Options	Options Value	Actual Proceeds	Wealth Lost by Early Exercise	Options Dumped for No. of Cents on the Dollar
Brown:					
11/05/05	8759	$310,374	$230,099	$80,475	74.1¢
Garner:					
11/3/97	7725	303,996	225,956	77,930	74.4¢
11/3/97	29,440	1,215,666	1,021,274	194,393	84¢
Newman:					
12/5/97	6291	226,141	165,516	60,625	73.2¢
12/5/97	9409	358,055	298,736	59,319	83.4¢
Prettyman:					
11/5/97	2,932	$93,476	$78,473	$15,003	$1.839
11/5/97	3,150	$123,669	$91,854	$31,815	74.3¢
11/5/97	2,057	$79,084	$48,422	$30,663	61.2¢
Woodbury:					
02/19/99	20,000	$352,820	$266,250	$86,570	75.5¢
Smith:					
11/14/97	4,269	$163,649	$136,644	$27,604	83.1¢

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168. Using the Black-Scholes equation we can ***also*** analyze those options which defendants ***did not*** exercise. For example, on 2/24/98 (the last day of the Class Period) defendants chose ***not*** to exercise any options. In particular, Garner did exercise his option to purchase 45,719 shares at a strike price of $37.63. However, the fact that Garner chose ***not*** to exercise these options in no way defeats scienter in this case. In particular, the value of these options on that day was $1,112,058. ***Had he exercised and sold these options he would have obtained only $22,860, a loss of 97.94% in the value of these options.*** No rational investor, basing his decision only on public information, could be expected to conduct his affairs in this manner. Further, Garner's decision ***not*** to exercise this option makes sense ***even if he had based his decision on the insider information as the value of the options after the bad news was revealed was $761,558 or almost $740,000 more than he would have obtained by early exercise.*** Because no executive would ever exercise such an option under these circumstances, this option was not in any informative way part of Garner's holdings available for sale.

169. As a boundary, it is reasonable to expect that a lawful rational executive would never exercise an option in which he or she would incur greater than a 20% loss. Removing such irrational option exercises from defendants' "available holdings" demonstrates that defendants held on to very few rationally exercisable options:

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170. Removing such irrational option exercises from defendants' "available holdings" demonstrates that defendants sold a tremendous amount of their truly ***available*** holdings.

Defendant	**% of Actual Available Holdings Sold**
Brown	47.01%
Garner	94.35%
Newman	44.52%
Prettyman	100.00%
Spath	42.68%

SAFE HARBOR

171. The safe harbor provided for forward-looking statements ("FLS") does not apply to the false FLS pleaded. The safe harbor does not apply to Dura's allegedly false financial statements. None of the FLS pleaded herein were identified as "forward-looking statements" when made, it was not stated that actual results "could differ materially from those projected," nor did meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the FLS accompany those FLS. None of the historic or present-tense statements made by defendants were assumptions underlying or relating to any plan, projection or statement of future economic performance, as they were not stated to be such assumptions underlying or relating to any projection or statement of future economic performance when made nor were any of the projections or forecasts made by defendants expressly related to or stated to be dependent on those historic or present-tense statements when made.

Appendix C

CLASS ACTION ALLEGATIONS

172. This is a class action on behalf of those persons who purchased Dura securities between 4/15/97 and 2/24/98 (the "Class"), and were harmed thereby. Class members are so numerous that joinder of them is impracticable.

173. Excluded from the Class are: (i) defendants; (ii) members of the families of each Individual Defendant; (iii) any entity in which any defendant has a controlling interest; (iv) officers and directors of Dura and its subsidiaries and affiliates; and (v) the legal representatives, heirs, successors or assigns of any such excluded party.

174. Throughout the Class Period, shares of Dura common stock were actively traded on the NASDAQ National Market System, which is an efficient market. The members of the Class, as purchasers on that market, are so numerous that joinder of all members is impracticable. As of 2/24/98, approximately 46 million shares of Dura common stock were outstanding.

175. Common questions of law and fact predominate and include whether defendants: (i) violated the 1934 Act; (ii) omitted and/or misrepresented material facts; (iii) knew or recklessly disregarded that their statements were false; (iv) artificially inflated Dura's stock price; and (v) the extent of and appropriate measure of damages.

176. Lead Plaintiffs' claims are typical of those of the Class. Prosecution of individual actions would create a risk of inconsistent adjudications. Plaintiffs will adequately

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protect the interests of the Class. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for Class members individually to seek redress for the wrongful conduct alleged herein.

177. The names and addresses of the record owners of Dura securities purchased or acquired during the Class Period are available from the Company's transfer agent(s). Notice may be provided to such record owners via first class mail using techniques and a form of notice similar to those customarily used in class actions.

FIRST CLAIM FOR RELIEF

178. Defendants violated §10(b) and Rule 10b-5 by:

(a) Employing devices, schemes and artifices to defraud;

(b) Making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

(c) Engaging in acts, practices and a course of business that operated as a fraud or deceit upon the Class in connection with their purchases of Dura securities.

179. Class members were damaged. In reliance on the integrity of the market, they paid artificially inflated prices for Dura securities.

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SECOND CLAIM FOR RELIEF

For Violation Of Section 20(a) Of The 1934 Act Against Defendants Garner, Spath and Newman

180. Plaintiffs incorporate ¶¶1-179. Plaintiffs assert this claim against Garner, Spath and Newman. These defendants acted as controlling persons of Dura and the other Individual Defendants within the meaning of §20 of the 1934 Act as alleged herein. By virtue of their executive and directorial positions, their knowledge and involvement in the day-to-day business of Dura, including its financial reporting and research and development, their stock ownership, and their power and ability to make public statements on behalf of Dura to shareholders, potential investors and the media, these defendants had the power and ability to control the actions of Dura and the other Individual Defendants.

181. By reasons of their wrongful conduct, defendants Garner, Spath and Newman are liable pursuant to §20(a) of the 1934 Act. As a direct and proximate result of these defendants' wrongful conduct, plaintiffs and the other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

PRAYER

WHEREFORE, plaintiffs pray for judgment, declaring this action to be a proper class action; awarding damages, including interest; and such equitable/injunctive or other relief as the Court may deem proper.

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JURY DEMAND

Plaintiffs demand a trial by jury.

DATED: September 23, 2000

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APPENDIX D — DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' SECOND CONSOLIDATED AND AMENDED COMPLAINT WITH EXHIBITS DATED AND FILED NOVEMBER 22, 2000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Master File No. 99 CV 0151 JL JFS

CLASS ACTION

In re DURA PHARMACEUTICALS, INC. SECURITIES LITIGATION

This Document Related To:

All Actions.

DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' SECOND CONSOLIDATED AND AMENDED COMPLAINT

[Fed. R. Civ. Proc. 12(b)(6), 9(b);
Priv. Secur. Litig. Ref. Act of 1995]

Date: March 12, 2001
Time: 10:30 a.m.
Ctrm: 11

The Honorable M. James Lorenz

Appendix D

1. Defendants Dura Pharmaceuticals, Inc. ("Dura"), Cam L. Garner, James W. Newman, Charles W. Prettyman, Walter F. Spath, Julia R. Brown, Joseph C. Cook, Jr. and Mitchell R. Woodbury (collectively, "Defendants") hereby request, pursuant to Rule 201 of the Federal Rules of Evidence, that this Court take judicial notice of the following court orders, public filings and other documents. True and correct copies of these documents are attached to this Request for Judicial Notice as Exhibits A through AC in support of Defendants' Motion to Dismiss Plaintiffs' Second Consolidated and Amended Complaint ("SAC"), filed concurrently herewith.

EXHIBIT NUMBER	DOCUMENT
A	Chart comparing alleged omissions and Dura's risk disclosures, excerpted from Dura's SEC filings;
B	United States House of Representatives Conference Report No. 104-369, 104th Cong., 1st Sess. 31 (1995);
C	Dura's Schedule 14A Information (Proxy Statement) filed with the U.S. Securities and Exchange Commission ("SEC") on April 16, 1997;
D	Dura's Schedule 14A Information (Proxy Statement) filed with the SEC on April 16, 1998;

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No. of	Option Value	Proceeds	Wealth Lost	Penny Per Dollar Obtained If Sold
Brown:				
12192	$296,555	$6,096	$290,459	2.1¢
14036	$429,693	$339,531	$90,162	79.0¢
Garner:				
2330	$66,797	$43,688	$23,109	65.4¢
45719	$1,112,058	$22,860	$1,089,199	2.1¢
31326	$872,876	$411,310	$461,566	47.1¢
Newman:				
12192	$296,555	$6,096	$290,459	2.1¢
3764	$107,907	$70,575	$37,332	65.4¢
8356	$232,834	$109,714	$123,120	47.1¢
19084	$584,231	$461,642	$122,589	79.0¢

Prettyman:				
6280	$192,254	$151,913	$40,340	79.0¢
6905	$197,953	$129,469	$68,485	65.4¢
12192	$296,555	$6,096	$290,459	2.1¢
5255	$146,427	$68,998	$77,429	47.1¢
Spath:				
17096	$523,371	$413,552	$109,819	79.0¢
12192	$296,555	$6,096	$290,459	2.1¢
8356	$232,834	$109,714	$123,120	47.1¢

Appendix D

E Statements of Changes in Beneficial Ownership (Forms 4 and 5) reported and filed with the SEC by Defendant Cam L. Garner;

F Statements of Changes in Beneficial Ownership (Forms 4 and 5) reported and filed with the SEC by Defendant James W. Newman;

G Statements of Changes in Beneficial Ownership (Forms 4 and 5) reported and filed with the SEC by Defendant Charles W. Prettyman;

H Statements of Changes in Beneficial Ownership (Forms 4 and 5) reported and filed with the SEC by Defendant Walter F. Spath;

I Statements of Changes in Beneficial Ownership (Forms 4 and 5) reported and filed with the SEC by Defendant Julia R. Brown;

J Statements of Changes in Beneficial Ownership (Forms 4 and 5) reported and filed with the SEC by Defendant Joseph C. Cook, Jr.;

K Statements of Changes in Beneficial Ownership (Forms 4 and 5) reported and filed with the SEC by Defendant Mitchell R. Woodbury;

L Daily Closing Price History for Dura's Common Stock, as reported by the NASDAQ National Market System, for the period of November 21, 1994 through November 18, 1999;

Appendix D

M Dura's Form 10-K filed with the SEC on March 31, 1997 for the fiscal year ended December 31, 1996;

N Dura's Form 10-K filed with the SEC on March 31, 1998 for the fiscal year ended December 31, 1997;

O Dura's Form 10-Q filed with the SEC on May 14, 1997 for the quarter ending March 31, 1997;

P Dura's Form 10-Q filed with the SEC on July 15, 1997 for the quarter ending June 30, 1997;

Q Dura's Form S-1 Registration Statement filed with the SEC on October 10, 1997.

R Dura's Form 10-Q filed with the SEC on October 21, 1997 for the quarter ending September 30, 1997;

S Dura's Press Release dated April 15, 1997 (SAC ¶ 56);

T Dura's Press Release dated May 7, 1997 (SAC ¶ 74);

U Dura's Press Release dated June 5, 1997 (SAC ¶ 79);

V Dura's Press Release dated July 15, 1997 (SAC ¶ 85);

W Dura's Press Release dated October 10, 1997 (SAC ¶ 107);

X Dura's Press Release dated October 14, 1997 (SAC ¶ 111);

Y Dura's Press Release dated November 10, 1997 (SAC ¶ 123);

Z Dura's Press Release dated January 20, 1998 (SAC ¶ 128);

AA Dura's Press Release dated February 24, 1998 (SAC ¶ 134);

AB Dura's Press Release dated November 4, 1998 (SAC ¶ 135); and

AC Dura's Prospectus filed with the SEC on November 13, 1996.

2. Judicial notice under Rule 201 of the Federal Rules of Evidence is appropriate for these legislative history materials concerning the Private Securities Litigation Reform Act of 1995 (the "Reform Act"), public records, and documents referenced or cited in the complaint. *See, e.g.*, this Court's Order in this matter Granting Defendants' Motion to Dismiss Without Prejudice dated July 11, 2000, at 9-10; *In re Silicon Graphics Sec. Litig.*, 183 F.3d 970, 986-87 (9th Cir. 1999) (on motion to dismiss court may take judicial notice of and consider public disclosure documents required by law to be filed and actually filed with the SEC, including

Form 4's and other documents evidencing defendants' stock trading history); *Kramer v. Time Warner*, 937 F.2d 767, 774 (2d Cir. 1991) (on motion to dismiss court may take judicial notice of and consider public disclosure documents required by law to be filed and actually filed with the SEC); *Ronconi v. Larkin* [Current Binder] Fed. Sec. L. Rep. (CCH) ¶ 90,212, at 90,887 (N.D. Cal. May 1, 1998) ("court can also take judicial notice of the relevant public disclosure documents filed with the [SEC], the full text of documents cited by plaintiffs in their complaint, and documents whose contents are alleged in the complaint and whose accuracy is not in dispute"); *cf. Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir.), *cert. denied*, 512 U.S. 1219, 114 S. Ct. 2704 (1994) (documents whose contents are alleged in a complaint may be considered in a motion to dismiss).

DATED: November 22, 2000

BROBECK, PHLEGER & HARRISON LLP

By: s/ Sean T. Prosser
Sean T. Prosser
Attorneys for Defendants

Appendix D

EXHIBIT L

DURA - Common Stock
Stock Price History

Date	Close	Volume (00s)
11/18/1999	13.563	7480
11/17/1999	13.688	3374
11/16/1999	13.438	4095
11/15/1999	13.125	1670
11/12/1999	13.188	1630
11/11/1399	13.000	5778
11/10/1999	12.625	3649
11/09/1999	12.500	3916
11/08/1999	13.000	2172
11/05/1999	12.938	3875
11/04/1999	12.750	1268
11/03/1999	12.500	1951
11/02/1999	12.250	3844
11/01/1999	12.125	2262
10/29/1999	12.781	1559
10/28/1999	12.875	1309
10/27/1999	12.438	2230
10/26/1999	12.719	2082
10/25/1999	12.938	2973
10/22/1999	13.063	2687
10/21/1999	13.063	3672
10/20/1999	12.875	5055
10/19/1999	12.875	4403
10/18/1999	12.469	2434
10/15/1999	12.875	5020

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Date	Close	Volume (00s)
10/14/1999	13.438	3757
10/13/1999	13.438	3475
10/12/1999	13.563	2346
10/11/1999	13.500	2345
10/08/1999	13.438	2856
10/07/1999	13.813	9701
10/06/1999	13.688	5965
10/05/1999	13.531	6773
10/04/1999	13.813	2209
10/01/1999	13.500	5731
09/30/1999	13.938	5177
09/29/1999	13.188	3763
09/28/1999	13.125	4481
09/27/1999	13.250	2658
09/24/1999	12.875	3203
09/23/1999	13.063	8982
09/22/1999	13.688	3501
09/21/1999	13.500	3224
09/20/1999	13.563	3273
09/17/1999	13.500	5696
09/16/1999	13.500	3260
09/15/1999	13.656	3699
09/14/1999	13.188	4341
09/13/1999	13.875	5291
09/10/1399	13.250	1594
09/09/1999	13.250	1771
09/09/1999	13.250	2534
09/07/1999	13.375	5031
09/03/1999	13.875	5041
09/02/1993	13.000	2760

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Date	Close	Volume (00s)
09/01/1999	13.188	2359
08/31/1999	13.313	4575
08/30/1999	13.375	15274
08/27/1999	14.500	24895
08/26/1999	13.875	8048
08/23/1999	13.375	8204
08/24/1999	12.875	6149
08/23/1999	12.875	9567
08/20/1999	12.500	5097
08/19/1999	12.094	7130
08/18/1999	12.188	5997
08/17/1999	11.875	7429
08/16/1999	11.000	4007
08/13/1999	10.500	7090
08/12/1999	10.313	2207
08/11/1999	10.250	4666
08/10/1999	10.250	2940
08/09/1999	10.313	13548
08/06/1999	10.250	2139
08/05/1999	10.375	2106
08/04/1999	10.375	5742
08/03/1999	10.750	12427
08/02/1999	10.563	2846
07/30/1999	10.438	6535
07/29/1999	10.250	3663
07/28/1999	10.250	4481
07/27/1999	10.000	8067
07/26/1999	10.000	8686
07/23/1999	9.953	7005
07/22/1999	10.000	6669

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Date	Close	Volume (00s)
07/21/1999	10.125	5243
07/20/1999	10.438	5001
07/19/1999	10.313	11324
07/16/1999	10.813	5838
07/15/1999	11.063	7357
07/14/1999	10.875	2430
07/13/1999	10.906	2558
07/12/1999	11.000	5360
07/09/1999	11.500	8576
07/08/1999	11.188	3067
07/07/1999	10.969	4755
07/06/1999	11.188	3721
07/02/1999	11.438	2799
07/01/1999	11.688	3266
06/30/1999	11.938	5768
06/29/1999	11.063	1566
06/28/1999	11.188	2095
06/25/1999	11.125	2215
06/24/1999	11.250	2303
06/23/1999	11.375	2674
06/22/1999	11.500	4215
06/21/1999	11.250	3127
06/18/1999	11.438	2851
06/17/1999	11.500	2525
06/16/1999	11.375	5036
06/15/1999	10.688	2322
06/14/1999	10.563	3380
06/11/1999	10.813	1974
06/10/1999	10.750	4790
06/09/1999	11.000	9132

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Date	Close	Volume (00s)
06/08/1999	10.500	7616
06/07/1999	10.281	3121
06/04/1999	10.281	7581
06/03/1999	10.500	6059
06/02/1999	10.250	3872
06/01/1999	10.563	8721
05/28/1999	10.375	7802
05/27/1999	10.188	4704
05/26/1999	10.625	4468
05/25/1999	11.000	3215
05/24/.1999	11.500	2262
05/21/1999	11.875	4939
05/20/1999	11.125	6443
05/19/i999	11.000	2024
05/18/1999	11.125	4721
05/17/1999	10.688	4315
05/14/1999	10.938	5194
05/13/1999	11.250	5049
05/12/1999	11.438	4238
05/11/1999	11.500	4564
05/10/1999	11.063	1751
05/07/1999	11.125	5729
05/06/1999	11.375	3125
05/05/1999	11.500	3134
05/04/1999	11.688	3261
05/03/1999	11.875	3154
04/30/1999	12.000	5446
04/29/1999	12.000	3268
04/28/1999	11.875	6979
04/27/1999	12.188	6626

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Date	Close	Volume (00s)
04/26/1999	12.438	10039
04/23/1999	12.125	5138
04/22/1999	12.375	7824
04/21/1999	12.813	3546
04/20/1999	12.625	5229
04/19/1999	12.500	4707
04/16/1999	12.938	5635
04/15/1999	12.750	6091
04/14/1999	13.875	6426
04/13/1999	14.500	3983
04/12/1999	14.813	3915
04/09/1999	14.969	8838
04/08/1999	14.063	4158
04/07/1999	14.188	5016
04/06/1999	13.813	2802
04/05/1999	14.125	2984
04/01/1999	13.938	6167
03/31/1999	14.125	2509
03/30/1999	14.438	3413
03/29/1999	14.375	3465
03/26/1999	14.375	6516
03/25/1999	13.156	5495
03/24/1999	12.625	3479
03/23/1999	12.875	3357
03/22/1999	13.438	2946
03/19/1999	13.750	5649
03/18/1999	13.875	5637
03/17/1999	15.813	3033
03/16/1999	15.938	2625
03/15/1999	16.313	4600

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Date	Close	Volume (00s)
03/12/1999	16.000	18375
03/11/1999	14.938	4058
03/10/1999	14.813	5761
03/09/1999	14.813	9551
03/08/1999	14.688	7809
03/05/1999	12.813	5546
03/04/1999	13.500	4026
03/03/1999	13.250	4345
03/02/1999	13.438	4594
03/01/1999	14.125	5304
02/26/1999	14.063	3412
02/25/1999	14.375	3413
02/24/1999	14.250	9946
02/23/1999	14.563	11641
02/22/1999	15.563	4987
02/19/1999	15.375	6903
02/18/1999	15.438	4510
02/17/1999	15.375	4159
02./16/1999	15.875	9162
02/12/1999	15.156	7619
02/11/1999	15.563	6894
02/10/1999	16.063	4278
02/09/1999	16.563	6759
02/08/1999	16.938	3013
02/05/1999	16.938	11190
02/04/1999	16.813	13851
02/03/1999	17.438	30328
02/02/1999	14.500	7388
02/01/1999	14.000	5225
02/29/1999	14.438	5806

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Date	Close	Volume (00s)
01/28/1999	14.750	12805
01/27/1999	14.000	5694
01/26/1999	14.313	8448
01/25/1999	14.433	3558
01/22/1999	14.719	4049
01/21/1999	14.875	5123
01/20/1999	14.938	4092
01/19/1999	14.875	6190
01/15/1999	15.000	9958
01/14/1999	14.125	3814
01/13/1999	14.375	5276
01/12/1999	15.000	3855
01/11/1999	14.938	3193
01/08/1999	15.250	13414
01/07/1999	15.813	9069
01/06/1999	16.000	17175
01/05/1999	14.938	3719
01/04/1999	14.625	5979
12/31/1998	15.188	9550
12/30/1998	14.875	20239
12/29/1998	13.813	20118
12/28/1998	13.188	14232
12/24/1998	13.375	8965
12/23/1998	13.500	37357
12/22/1998	11.500	8495
12/21/1998	11.938	8363
12/18/1998	12.375	14432
12/17/1998	11.750	12856
12/16/1998	11.688	34640
12/15/1998	10.875	6410

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Date	Close	Volume (00s)
12/14/1998	10.438	5045
12/11/1998	11.000	4387
12/10/1998	10.938	3477
12/09/1998	11.125	5044
12/08/1998	11.438	9244
12/07/1998	11.125	14954
12/04/1998	10.875	50356
12/03/1998	12.500	4089
12/02/1998	12.500	10030
12/01/1998	12.500	6006
11/30/1998	12.938	7125
11/27/1998	13.500	3711
11/25/1998	13.750	4059
11/24/1998	13.750	9765
11/23/1998	13.563	22471
11/20/1998	12.438	8891
11/19/1998	12.250	7223
11/19/1998	12.125	7069
11/17/1998	11.875	13270
11/16/1998	12.063	5924
11/13/1998	11.813	11694
11/12/1998	11.625	11985
11/11/1998	10.969	13987
11/10/1998	10.500	7389
11/09/1998	10.313	6841
11/06/1998	10.375	13807
11/05/1992	10.313	39209
11/04/1999	9.750	97966
11/03/1998	12.375	15353
11/02/1998	12.500	11925

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Date	Close	Volume (00s)
10/30/1998	12.063	18410
10/29/1998	12.250	20186
10/29/1998	1.938	11253
10/27/1999	12.875	13407
10/26/1998	13.375	11886
10/23/1998	13.313	12608
10/22/1998	12.125	11901
10/21/1998	11.250	9669
10/20/1998	10.750	14524
10/19/1998	10.813	19713
10/16/1998	9.281	11051
10/15/1998	9.438	11294
10/14/1998	9.625	10481
10/13/1998	10.000	9964
10/12/1998	8.938	12810
10/09/1998	8.188	12263
10/08/1998	8.188	8309
10/07/1998	8.875	5303
10/06/1998	9.438	13989
10/05/1998	9.938	30156
10/02/1999	9.500	18609
10/01/1998	9.813	16129
09/30/1998	10.938	7563
09/29/1998	10.750	18015
09/28/1998	10.438	26706
09/25/1998	10.563	29767
09/24/1998	10.625	51022
09/23/1998	11.938	15353
09/22/1998	14.438	3974
09/21/1998	14.500	18268

Appendix D

Date	Close	Volume (00s)
09/18/1998	15.625	12694
09/17/1998	13.813	4068
09/16/1998	14.063	5789
09/15/1398	13.875	8813
09/14/1998	14.750	4486
09/11/1998	15.375	4910
09/10/1998	15.375	3138
09/09/1998	16.250	4108
09/08/1998	17.000	6924
09/04/1998	16.813	2451
09/03/1998	16.125	2886
09/02/1998	17.063	7205
09/01/1998	16.813	10110
08/31/1998	16.500	11425
08/28/1998	17.000	4696
08/27/1998	17.625	3086
08/26/1998	18.938	4508
08/25/1998	19.750	3862
08/24/1998	20.063	7312
08/21/1998	20.500	11635
08/20/1998	20.875	6731
08/19/1998	21.250	6215
08/18/1998	21.625	9689
08/17/1998	22.000	5981
08/14/1998	22.875	1638
08/13/1998	23.500	2690
08/12/1998	24.063	1826
08/11/1998	23.875	3577
08/10/1998	24.313	1957
08/07/1998	24.625	7858

Appendix D

Date	Close	Volume (00s)
08/06/1998	24.438	6553
08/05/1998	24.125	3678
08/04/1998	23.938	8136
08/03/1998	25.125	4792
07/31/1998	25.750	7122
07/30/1998	25.750	4511
07/29/1998	25.813	4638
07/28/1998	25.500	7271
07/27/1998	25.813	4603
07/24/1998	25.500	3560
07/23/1998	25.250	3473
07/22/1998	25.313	4815
07/21/1998	24.125	5318
07/20/1098	25.750	4759
07/17/1998	26.750	12947
07/16/1998	25.875	18563
07/15/1998	24.938	20670
07/14/1999	22.500	21383
07/13/1998	22.125	10597
07/10/1998	21.938	10023
07/09/1998	22.500	7479
07/08/1998	22.688	4925
07/07/1998	22.000	5165
07/06/1998	22.188	1906
07/02/1998	22.313	3016
07/01/1998	22.313	11734
06/30/1998	22.375	8241
06/29/1998	23.125	4675
06/26/1998	23.313	4928
06/25/1998	24.375	4635

Appendix D

Date	Close	Volume (00s)
06/24/1998	24.125	7893
06/23/1998	23.125	10393
06/22/1998	22.500	8613
06/19/1998	21.688	13190
06/18/1998	22.875	18429
06/17/1998	24.375	14619
06/16/1998	24.000	15927
06/15/1998	26.125	4972
06/12/1998	27.563	2324
06/11/1998	27.500	11000
06/10/1998	28.500	7187
06/09/1998	28.250	8555
06/08/1998	27.438	5732
06/05/1998	25.938	1905
06/04/1998	25.563	2028
06/03/1998	25.563	2753
06/02/1998	25.625	4502
06/01/1998	26.031	2823
05/29/1998	26.063	2891
05/28/1998	26.438	3030
05/27/1998	25.625	5811
05/26/1998	25.438	3680
05/22/1998	2.6.500	1873
05/21/1998	27.125	4092
05/20/1998	27.688	3663
05/19/1998	27.688	4857
05/18/1998	28.188	5739
05/15/1998	27.750	4800
05/14/1998	27.625	3673
05/13/1998	27.813	12245

Appendix D

Date	Close	Volume (00s)
05/12/1998	27.250	13504
05/11/1998	25.688	3776
05/08/1998	25.938	7717
05/07/1998	25.250	3512
05/06/1998	25.500	2976
05/05/1998	26.125	1992
05/04/1998	26.000	4815
05/01/1998	25.813	4031
04/30/1998	26.500	10550
04/29/1998	25.313	3964
04/28/1998	24.625	2793
04/27/1998	24.313	5623
04/24/1998	25.313	4997
04/23/1998	25.563	6973
04/22/1998	26.438	14634
04/21/1998	26.281	24282
04/20/1998	24.688	16643
04/17/1998	23.000	14145
04/16/1998	23.313	17203
04/15/1998	22.625	11706
04/14/1998	23.000	5999
04/13/1998	23.063	4652
04/09/1998	23.750	10633
04/08/1398	23.125	10824
04/07/1998	23.189	13605
04/06/1999	23.938	9041
04/03/1998	23.813	15305
04/02/1998	23.500	16796
04/01/1998	23.813	31467
03/31/1998	24.625	29131

Appendix D

Date	Close	Volume (00s)
03/30/1998	26.000	11186
03/27/1998	26.250	6513
03/26/1998	27.000	5110
03/25/1998	27.125	7237
03/24/1998	27.250	5592
03/23/1998	27.750	6536
03/20/1998	27.656	11937
03/19/1998	28.250	28970
03/18/1998	26.500	15866
03/17/1998	25.563	13837
03/16/1998	24.938	6886
03/13/1998	24.813	5270
03/12/1998	24.875	16869
03/11/1998	24.000	8717
03/10/1998	24.375	11177
03/09/1998	24.063	11718
03/06/1998	24.563	15456
03/05/1998	23.375	13913
03/04/1998	24.063	13886
03/03/1998	24.500	14225
03/02/1998	25.000	22564
02/27/1998	25.125	49143
02/26/1998	26.375	98641
02/25/1998	23.938	323919
02/24/1998	38.125	12318
02/23/1998	38.688	13824
02/20/1998	37.063	17388
02/19/1998	37.500	15345
02/18/1998	37.875	10388
02/17/1998	37.625	20501

Appendix D

Date	Close	Volume (00s)
02/13/1998	38.750	4844
02/12/1998	38.688	9504
02/11/1998	39.625	10751
02/10/1998	40.750	7667
02/09/1998	40.375	9354
02/06/1999	39.313	18044
02/05/1998	37.000	9636
02/04/1998	37.125	23946
02/03/1998	36.438	22278
02/02/1998	40.188	12502
01/30/1998	39.688	10343
01/29/1998	39.375	11261
01/28/1998	40.063	18954
01/27/1998	40.500	14239
01/26/1998	42.000	5461
01/23/1998	42.313	3149
01/22/1998.	43.000	7329
01/21/1998	44.125	16383
01/20/1998	42.750	25667
01/16/1998	46.250	7418
01/15/1998	45.000	4416
01/14/1998	46.125	8672
01/13/1998	45.125	7034
01/12/1998	43.250	8079
01/09/1998	43.563	4454
01/08/1998	45.063	1954
01/07/1998	46.000	3247
01/06/1998	46.750	6293
01/05/1998	47.500	5783
01/02/1998	46.125	2150

Appendix D

Date	Close	Volume (00s)
12/31/1997	45.875	3045
12/30/1997	46.125	14633
12/29/1997	43.750	5222
12/26/1997	43.750	763
12/24/1997	43.625	738
12/23/1997	44.000	1369
12/22/1997	44.625	2463
12/19/1997	44.875	4595
12/18/1997	45.688	6504
12/17/1997	43.625	5157
12/16/1997	43.875	2176
12/15/1997	44.750	3481
12/12/1997	45.625	2111
12/11/1997	46.000	3339
12/10/1997	46.250	4494
12/09/1997	46.938	5528
12/08/1997	48.000	7073
12/05/1997	46.750	3129
12/04/1997	46.375	4641
12/03/1997	44.188	6458
12/02/1997	44.500	3486
12/01/1997	44.250	3868
11/28/1997	43.875	1949
11/26/1997	44.000	2555
11/25/1997	43.813	4472
11/24/1997	43.813	3900
11/21/1997	46.625	2486
11/20/1997	46.375	4128
11/19/1997	45.750	2615
11/18/1997	45.625	1448

Appendix D

Date	Close	Volume (00s)
11/17/1997	45.625	2746
11/14/1997	44.250	5864
11/13/1997	45.875	5866
11/12/1997	45.875	4753
11/11/1997	47.125	2005
11/10/1997	48.375	3373
11/07/1997	47.375	1072
11/06/1997	48.250	1413
11/05/1997	48.750	2910
11/04/1997	48.500	3996
11/03/1997	48.813	3589
10/31/1997	48.375	2206
10/30/1997	47.375	5923
10/29/1997	46.500	5068
10/28/1997	45.250	8911
10/27/1997	43.250	4750
10/24/1997	48.500	3170
10/23/1997	49.000	6301
10/22/1997	49.375	5213
10/21/1997	48.000	7683
10/20/1997	49.000	6119
10/17/1997	49.063	11007
10/16/1997	50.563	3537
10/15/1997	49.938	5771
10/14/1997	51.688	10410
10/13/1997	52.875	6476
10/10/1997	51.500	5291
10/09/1997	49.625	10509
10/08/1997	51.000	14452
10/07/1997	47.375	3458

Appendix D

Date	Close	Volume (00s)
10/06/1997	46.625	5367
10/03/1997	47.000	6745
10/02/1997	45.125	3220
10/01/1997	45.000	5324
09/30/1997	43.625	3134
09/29/1997	44.125	4058
09/26/1997	43.125	5587
09/25/1997	43.000	7158
09/24/1997	44.750	6762
09/23/1997	44.250	8830
09/22/1997	44.000	5307
09/19/1997	43.625	5177
09/18/1997	43.750	4635
09/17/1997	43.250	8239
09/16/1997	41.500	4693
09/15/1997	40.375	2321
09/12/1997	40.500	2446
09/11/1997	40.000	2112
09/10/1997	39.750	4392
09/09/1997	40.375	4395
09/08/1997	40.250	3341
09/05/1997	40.375	8497
09/04/1997	39.188	10545
09/03/1997	37.875	8388
09/02/1997	37.625	13562
08/29/1997	35.625	7023
08/28/1997	35.188	6273
08/27/1997	35.438	9576
08/26/1997	35.250	5022
08/25/1997	35.875	3695

Appendix D

Date	Close	Volume (00s)
08/22/1997	36.000	7268
08/21/1997	36.500	5115
08/20/1997	36.500	11793
08/19/1997	35.500	18061
08/18/1997	33.375	6551
08/15/1997	33.625	5746
08/14/1997	34.625	6665
08/13/1997	34.250	7515
08/12/1997	34.500	677
08/11/1997	34.250	21599
08/08/1997	34.250	14942
08/07/1997	37.313	8080
08/06/1997	39.125	5390
08/05/1997	38.875	8558
08/04/1997	39.875	4607
08/01/1997	39.313	6619
07/31/1997	39.000	4780
07/30/1997	39.625	19510
07/29/1997	37.063	8114
07/28/1997	37.188	11398
07/25/1997	39.250	13954
07/24/1997	41.063	5959
07/23/1997	42.000	6052
07/22/1997	42.125	6585
07/21/1997	41.625	3222
07/18/1997	41.625	5395
07/17/1997	42.250	3016
07/16/1997	43.375	4560
07/15/1997	43.125	9249
07/14/1997	42.500	9644

Appendix D

Date	Close	Volume (00s)
07/11/1997	40.563	3399
07/10/1997	40.125	4194
07/09/1997	40.125	5165
07/08/1997	41.313	8726
07/07/1997	42.750	6616
07/03/1997	43.250	2060
07/02/1997	43.563	12153
07/01/1997	42.375	5402
06/30/1997	39.875	11100
06/27/1997	41.875	3680
06/26/1997	39.875	5874
06/25/1997	38.250	6291
06/24/1997	39.000	11462
06/23/1997	42.750	1956
06/20/1997	43.125	2823
06/19/1997	43.250	3346
06/18/1997	41.750	2080
06/17/1997	41.625	2998
06/16/1997	42.500	3695
06/13/1997	41.250	3668
06/12/1997	41.438	1746
06/11/1997	40.375	3897
06/10/1997	41.250	3155
06/09/1997	39.750	1898
06/06/1997	40.063	1672
06/05/1997	39.063	3061
06/04/1997	39.625	1735
06/03/1997	39.500	818
06/02/1997	40.063	1774
05/30/1997	39.750	2211

Appendix D

Date	Close	Volume (00s)
05/29/1997	40.250	7013
05/28/1997	39.938	2780
05/27/1997	42.563	2646
05/23/1997	42.875	4446
05/22/1997	41.250	6580
05/21/1997	40.750	3855
05/20/1997	40.625	5284
05/19/1997	39.500	3749
05/16/1997	38.750	1173
05/15/1997	39.125	2879
05/14/1997	39.250	8551
05/13/1997	37.625	3291
05/12/1997	37.000	3474
05/09/1997	36.250	4103
05/08/1997	36.125	4935
05/07/1997	37.000	20960
05/06/1997	34.500	4401
05/05/1997	35.125	4666
05/02/1997	33.875	5927
05/01/1997	30.125	5454
04/30/1997	29.000	15474
04/29/1997	27.625	4979
04/28/1997	27.250	9333
04/25/1997	25.000	10327
04/24/1997	29.500	14363
04/23/1997	32.000	4306
04/22/1997	32.063	4632
04/21/1997	34.125	4268
04/18/1997	34.625	851
04/17/1997	33.813	2042

Appendix D

Date	Close	Volume (00s)
04/16/1997	34.000	3395
04/15/1997	34.000	13341
04/14/1997	28.813	8368
04/11/1997	30.750	4312
04/10/1997	32.000	4461
04/09/1997	32.000	5321
04/08/1997	31.875	6408
04/07/1997	32.063	11876
04/04/1997	33.875	5089
04/03/1997	33.625	3444
04/02/1997	33.875	5134
04/01/1997	35.750	1278
03/31/1997	35.750	2181
03/27/1997	36.813	1528
03/26/1997	36.938	3352
03/25/1997	38.500	4688
03/24/1997	35.500	4081
03/21/1997	35.250	3250
03/20/1997	37.000	3742
03/19/1997	36.125	3318
03/18/1997	36.250	4949
03/17/1997	36.125	5560
03/14/1997	32.313	1532
03/13/1997	38.313	2890
03/12/1997	38.625	4413
03/11/1997	39.000	7356
03/10/1997	39.000	3876
03/07/1997	39.375	4831
03/06/1997	37.250	5609
03/05/1997	36.750	8412

Appendix D

Date	Close	Volume (00s)
03/04/1997	34.750	2633
03/03/1997	34.000	2706
02/28/1997	33.625	9230
02/27/1997	34.000	7478
02/26/1997	35.625	8131
02/25/1997	37.250	1359
02/24/1997	37.500	2089
02/21/1997	37.750	2521
02/20/1997	32.875	2591
02/19/1997	39.375	4301
02/18/1997	39.000	3266
02/14/1997	33.313	699
02/13/1997	39.875	4983
02/12/1997	39.125	5864
02/11/1997	37.500	5802
02/10/1997	39.875	5926
02/07/1997	40.375	1321
02/06/1997	40.125	2222
02/05/1997	40.125	1723
02/04/1997	41.000	1078
02/03/1997	41.750	1537
01/31/1997	42.000	2107
01/30/1997	41.750	2243
01/29/1997	43.000	1228
01/28/1997	42.250	4032
01/27/1997	40.250	1195
01/24/1997	42.000	1270
01/23/1997	42.750	2321
01/22/1997	41.750	3894
01/21/1997	42.500	9228

Appendix D

Date	Close	Volume (00s)
01/20/1997	41.938	2585
01/17/1997	43.250	1726
01/16/1997	43.500	5455
01/15/1997	44.625	4918
01/14/1997	43.125	3500
01/13/1997	39.750	1716
01/10/1997	40.063	2582
01/09/1997	40.625	3843
01/08/1997	40.250	3869
01/07/1997	41.500	4701
01/06/1997	42.000	2250
01/03/1997	43.750	2297
01/02/1997	43.500	7962
12/31/1996	47.750	8194
12/30/1996	45.125	1646
12/27/1990	44.625	3472
12/26/1996	46.000	3136
12/24/1996	43.750	3400
12/23/1996	40.563	2670
12/20/1996	42.875	6492
12/19/1996	43.500	8638
12/18/1996	42.000	9048
12/17/1996	37.000	8652
12/16/1996	36.000	5235
12/13/1996	39.125	4899
12/12/1996	39.625	4243
12/11/1996	40.500	8572
12/10/1996	41.750	8641
12/09/1996	37.750	3534
12/06/1996	37.625	7324

Appendix D

Date	Close	Volume (00s)
12/05/1996	39.250	5257
12/04/1996	38.250	5631
12/03/1996	37.875	4289
12/02/1996	38.500	3917
11/29/1996	37.000	1368
11/27/1996	38.250	8225
11/26/1996	35.000	12358
11/25/1996	34.250	4603
11/22/1996	32.875	3377
11/21/1996	32.000	3256
11/20/1996	32.000	4814
11/19/1996	32.125	2910
11/18/1996	31.625	6607
11/15/1996	33.625	3267
11/14/1996	33.250	4989
11/13/1996	33.625	22079
11/12/1996	33.500	1868
11/11/1996	33.000	976
11/08/1996	34.250	1067
11/07/1996	34.500	4213
11/06/1996	34.375	5394
11/05/1996	31.500	2634
11/04/1996	33.250	2017
11/01/1996	35.250	2014
10/31/1996	34.500	1405
10/30/1996	33.500	2550
10/29/1996	35.125	1006
10/28/1990	35.500	4398
10/25/1996	34.500	3120
10/24/1996	36.000	1255

Appendix D

Date	Close	Volume (00s)
10/23/1996	35.500	2836
10/22/1996	34.000	6022
10/21/1996	33.500	4653
10/18/1996	33.250	4331
10/17/1996	34.000	3303
10/16/1996	34.750	5542
10/15/1996	35.000	10711
10/14/1995	33.750	2279
10/11/1996	32.500	17428
10/10/1996	33.250	4069
10/09/1996	32.500	4389
10/08/1996	33.750	2478
10/07/1990	35.250	1473
10/04/1996	37.000	1216
10/03/1996	36.250	1638
10/02/1996	37.000	1607
10/01/1996	35.500	1716
09/30/1996	36.875	2777
09/27/1996	37.500	2067
09/26/1996	37.500	4565
09/25/1996	37.000	3006
09/24/1996	37.250	4617
09/23/1996	36.750	1446
09/20/1996	39.500	4602
09/19/1996	40.000	2718
09/18/1990	38.000	2742
09/17/1996	38.500	3222
09/16/1996	38.500	3321
09/13/1996	38.750	3279
09/12/1996	36.500	1887

Appendix D

Date	Close	Volume (00s)
09/11/1996	38.000	6984
09/10/1996	36.250	10925
09/09/1996	34.875	3286
09/06/1996	34.500	2943
09/05/1996	33.500	3396
09/04/1996	33.750	3963
09/03/1996	32.750	10225
08/30/1996	34.750	4124
08/29/1996	34.750	10302
08/28/1996	34.438	9883
08/27/1996	34.750	7736
08/26/1996	32.000	2474
08/23/1996	31.375	5503
08/22/1996	32.500	19863
08/21/1996	26.750	136
08/20/1996	26.500	134
08/19/1996	27.000	1368
08/16/1996	27.375	1074
08/15/1996	28.250	784
08/14/1990	28.000	1635
08/13/1996	27.000	1654
08/12/1996	26.500	1835
08/09/1996	28.125	1228
08/08/1996	27.750	2181
08/07/1996	28.000	4322
08/06/1996	26.500	1927
08/05/1996	26.500	6655
08/02/1996	24.250	7658
08/01/1996	23.750	4425
07/31/1996	23.250	3884

Appendix D

Date	Close	Volume (00s)
07/30/1996	21.375	1454
07/29/1996	21.500	4226
07/26/1996	22.750	6387
07/25/1996	24.375	6543
07/24/1996	21.750	7789
07/23/1996	21.500	3863
07/22/1996	24.688	3441
07/19/1996	25.250	4479
07/18/1996	25.750	7064
07/17/1996	24.375	8571
07/16/1996	22.000	15963
07/15/1996	25.000	3852
07/12/1996	27.000	6062
07/11/1996	25.500	5336
07/10/1996	27.250	1757
07/09/1996	26.938	4505
07/08/1990	27.500	5063
07/05/1996	27.250	4014
07/03/1996	28.250	3914
07/02/1996	26.500	6442
07/01/1996	29.625	21314
06/28/1996	28.000	18229
06/27/1990	24.188	22004
06/26/1996	23.688	12512
06/25/1996	25.750	15063
06/24/1996	26.625	4544
06/21/1996	26.625	4870
06/20/1996	27.242	8671
06/19/1996	26.875	18629
06/18/1996	27.688	40158

Appendix D

Date	Close	Volume (00s)
06/17/1996	32.313	4118
06/14/1996	32.250	7681
06/13/1996	34.500	10121
06/12/1996	33.375	9359
06/11/1996	33.250	6879
06/10/1996	34.000	6236
06/07/1996	34.063	11863
06/06/1996	33.688	9634
06/05/1996	33.063	9997
06/04/1996	31.875	7846
06/03/1996	31.375	10594
05/31/1996	30.813	5966
05/30/1996	30.688	8541
05/29/1996	29.625	6741
05/28/1996	30.563	8703
05/24/1996	31.250	15960
05/23/1996	29.438	33869
05/22/1996	29.688	2275
05/21/1996	29.750	2070
05/20/1996	29.938	4419
05/17/1996	29.875	1528
05/16/1996	29.875	4246
05/15/1996	29.000	3001
05/14/1996	29.688	4091
05/13/1996	28.438	1465
05/10/1996	29.250	3679
05/09/1996	28.439	7135
05/08/1996	27.063	8611
05/07/1996	27.156	1598
05/06/1996	28.000	6823

Appendix D

Date	Close	Volume (00s)
05/03/1996	28.875	12793
05/02/1996	25.813	5145
05/01/1996	27.375	7476
04/30/1996	26.750	4661
04/29/1996	27.625	5704
04/26/1996	29.000	2490
04/25/1996	29.469	6700
04/24/1996	29.813	12236
04/23/1996	26.750	4693
04/22/1996	26.375	5175
04/19/1996	25.125	2903
04/18/1996	26.000	1177
04/17/1996	26.250	4187
04/16/1996	25.750	8022
04/15/1996	24.750	2473
04/12/1996	24.188	1024
04/11/1996	24.250	4209
04/10/1996	24.438	7010
04/09/1996	24.000	1526
04/08/1996	24.000	3234
04/04/1996	24.125	2093
04/03/1996	24.750	3201
04/02/1996	24.500	818
04/01/1996	24.625	4151
03/29/1996	24.313	8527
03/28/1996	23.750	2929
03/27/1996	24.375	4693
03/26/1996	24.625	4580
03/25/1996	24.875	3920
03/22/1996	26.375	1287

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Date	Close	Volume (00s)
03/21/1996	26.250	4884
03/20/1996	26.375	5751
03/19/1996	25.625	5171
03/18/1996	24.750	4014
03/15/1996	24.000	2818
03/14/1996	24.500	10028
03/13/1996	22.188	15099
03/12/1996	21.375	10143
03/11/1996	22.500	8055
03/08/1996	22.000	4006
03/07/1996	22.875	3047
03/06/1996	21.875	2826
03/05/1996	22.000	4204
03/04/1996	21.125	925
03/01/1996	20.750	1507
02/29/1996	21.1[illegible]	1849
02/28/1996	21.250	3267
02/27/1996	20.750	5293
02/26/1996	20.625	3858
02/23/1996	20.500	5702
02/22/1996	19.250	903
02/21/1996	19.375	1529
02/20/1996	19.375	1307
02/16/1996	19.625	1310
02/15/1996	19.500	2494
02/14/1996	19.750	6016
02/13/1996	19.125	6291
02/12/1996	19.750	6096
02/09/1996	19.500	3322
02/08/1996	19.188	10214

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Date	Close	Volume (00s)
02/07/1996	18.813	1432
02/06/1996	18.875	3507
02/05/1996	18.875	5233
02/02/1996	18.188	2268
02/01/1996	18.250	3331
01/31/1996	19.250	6116
01/30/1996	19.250	11093
01/29/1996	20.063	12692
01/26/1996	19.250	2578
01/25/1996	19.375	4696
01/24/1996	19.500	2968
01/23/1990	19.375	4270
01/22/1996	19.500	1958
01/19/1996	19.500	7260
01/18/1996	19.438	6736
01/17/1996	17.875	3221
01/16/1996	17.500	3595
01/15/1996	17.500	4406
01/12/1996	18.500	13039
01/11/1996	17.250	1589
01/10/1996	16.750	2779
01/09/1996	16.750	1567
01/08/1996	16.938	210
01/05/1996	17.125	3301
01/04/1996	16.875	7970
01/03/1996	17.375	2113
01/02/1996	16.813	10195
12/29/1995	17.375	3836
12/28/1995	16.875	6707
12/27/1995	17.000	15377

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Date	Close	Volume (00s)
12/26/1995	15.625	3702
12/22/1995	14.500	6093
12/21/1995	13.875	8308
12/20/1995	13.813	2524
12/19/1995	14.469	1288
12/18/1995	14.000	2218
12/15/1995	14.500	2173
12/14/1995	15.250	960
12/13/1995	15.250	4635
12/12/1995	15.938	5047
12/11/1995	14.688	3695
12/08/1995	14.500	2112
12/07/1995	14.625	484
12/06/1995	14.625	695
12/05/1995	14.313	2586
12/04/1995	14.000	2324
12/01/1995	14.625	406
11/30/1995	14.625	829
11/29/1995	14.688	755
11/28/1995	14.625	3449
11/27/1995	14.250	1912
11/24/1995	13.625	70
11/22/1995	13.875	3839
11/21/1995	13.375	1109
11/20/1995	13.625	2940
11/17/1995	13.625	2142
11/16/1995	14.250	1597
11/15/1995	13.938	1876
11/14/1995	14.500	2231
11/13/1995	15.188	2917

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Date	Close	Volume (00s)
11/10/1995	15.000	4515
11/09/1995	14.938	1718
11/08/1995	15.000	2182
11/07/1995	14.813	1961
11/06/1995	15.313	1883
11/03/1995	15.188	5735
11/02/1995	15.125	3944
11/01/1995	15.000	3622
10/31/1995	14.625	1553
10/30/1995	14.563	1734
10/27/1995	14.500	1553
10/26/1995	14.500	2720
10/25/1995	14.000	2707
10/24/1995	14.063	4878
10/23/1995	14.000	2998
10/20/1995	14.000	4067
10/19/1995	14.875	2146
10/18/1995	15.125	6132
10/17/1995	14.938	2732
10/16/1995	14.750	4153
10/13/1995	14.625	1007
10/12/1995	14.500	875
10/11/1995	14.375	3030
10/10/1995	14.125	883
10/09/1995	14.125	996
10/06/1995	14.375	1474
10/05/1995	14.438	3926
10/04/1995	14.188	5633
10/03/1995	14.000	1674
10/02/1995	14.438	3573

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Date	Close	Volume (00s)
09/29/1995	14.875	18986
09/28/1995	17.375	34709
09/27/1995	14.563	4434
09/26/1995	14.250	4495
09/25/1995	14.500	4386
09/22/1995	13.750	1652
09/21/1995	13.375	6198
09/20/1995	13.000	933
09/19/1995	13.000	1968
09/18/1995	13.000	687
09/15/1995	13.000	609
09/14/1995	13.375	1355
09/13/1995	13.438	2324
09/12/1995	13.438	5935
09/11/1995	12.875	5701
09/08/1995	12.500	2909
09/07/1995	12.125	4970
09/06/1995	11.875	1693
09/05/1995	11.875	1536
09/01/1995	12.000	1254
08/31/1995	12.250	415
08/30/1995	12.250	1338
08/29/1995	12.250	1456
08/28/1995	12.125	727
08/25/1995	12.125	3206
08/24/1995	11.875	2307
08/23/1995	12.000	1424
08/22/1995	12.000	3919
08/21/1995	12.000	4098
08/18/1995	12.125	2676

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Date	Close	Volume (00s)
08/17/1995	12.375	4066
08/16/1995	12.375	585
08/15/1995	12.375	5860
08/14/1995	12.500	4770
08/11/1995	12.500	6539
08/10/1995	12.750	24392
08/09/1995	13.500	789
08/08/1995	13.375	3195
08/07/1995	13.563	3932
08/04/1995	13.000	3040
08/03/1995	13.125	1754
08/02/1995	13.438	5088
08/01/1995	13.375	1136
07/31/1995	12.875	3426
07/28/1995	13.000	1201
07/27/1995	13.063	2078
07/26/1995	13.313	3059
07/25/1995	13.000	5333
07/24/1995	12.375	2685
07/21/1995	11.500	441
07/20/1995	11.500	2997
07/19/1995	10.875	3513
07/18/1995	11.313	7676
07/17/1995	11.938	7266
07/14/1995	11.500	9217
07/13/1995	10.625	6166
07/12/1995	10.000	1051
07/11/1995	10.000	1338
07/10/1995	9.875	3771
07/07/1995	10.250	1470

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Date	Close	Volume (00s)
07/06/1995	10.000	2182
07/05/1995	9.375	3238
07/03/1995	9.219	1762
06/30/1995	9.406	3734
06/29/1995	9.375	9818
06/28/1995	9.000	1531
06/27/1995	9.250	11324
06/26/1995	9.125	1340
06/23/1995	8.875	461
06/22/1995	8.750	1426
06/21/1995	8.625	2868
06/20/1995	8.563	3446
06/19/1995	8.125	3090
06/16/1995	8.500	1254
06/15/1995	8.375	12467
06/14/1995	7.000	1050
06/13/1995	7.125	2565
06/12/1995	7.000	1459
06/09/1995	6.750	3295
06/08/1995	7.250	1708
06/07/1995	7.000	517
05/06/1995	7.188	2689
06/05/1995	7.188	1295
06/02/1995	7.250	6244
06/01/1995	7.000	2491
05/31/1995	7.500	1139
05/30/1995	7.375	355
05/26/1995	7.375	676
05/25/1995	7.469	546
05/24/1995	7.875	1092

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Date	Close	Volume (00s)
05/23/1995	7.844	2829
05/22/1995	7.500	1174
05/19/1995	7.625	3442
05/18/1995	7.750	1676
05/17/1995	7.625	914
05/16/1995	7.875	807
05/15/1995	7.750	648
05/12/1995	8.000	3616
05/11/1995	7.688	5923
05/10/1995	8.125	3348
05/09/1995	8.063	14906
05/08/1995	7.625	7758
05/05/1995	7.750	2183
05/04/1995	7.625	10095
05/03/1995	7.688	2941
05/02/1995	7.875	2060
05/01/1995	7.750	2638
04/28/1995	7.656	6899
04/27/1995	8.000	11694
04/26/1995	7.438	1114
04/25/1995	7.500	3296
04/24/1995	7.625	1650
04/21/1995	7.750	389
04/20/1995	7.750	1153
04/19/1995	7.750	17199
04/18/1995	8.125	6436
04/17/1995	7.625	279
04/13/1995	7.375	124
04/12/1995	7.500	125
04/11/1995	7.375	1452

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Date	Close	Volume (00s)
04/10/1995	7.250	70
04/07/1995	7.500	1288
04/06/1995	7.375	1347
04/05/1995	7.625	353
04/04/1995	7.750	5515
04/03/1995	7.625	1090
03/31/1995	7.438	601
03/30/1995	7.250	1935
03/29/1995	7.250	376
03/28/1995	7.250	6123
03/27/1995	7.250	825
03/24/1995	7.250	9487
03/23/1995	7.125	7717
03/22/1995	6.813	4651
03/21/1995	6.500	269
03/20/1995	6.375	1235
03/17/1995	6.250	1024
03/16/1995	6.438	1229
03/15/1995	6.250	4094
03/14/1995	6.000	2286
03/13/1995	6.500	1177
03/10/1995	6.500	62
03/09/1995	6.500	443
03/08/1995	6.500	698
03/07/1995	6.375	234
03/06/1995	6.625	215
03/03/1995	6.688	193
03/02/1995	6.500	787
03/01/1995	6.625	1918
02/28/1995	7.000	93

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Date	Close	Volume (00s)
02/27/1995	6.625	660
02/24/1995	6.688	1261
02/23/1995	6.750	1598
02/22/1995	7.000	1069
02/21/1995	6.500	2675
02/17/1995	6.375	144
02/16/1995	6.625	1140
02/15/1995	6.563	3064
02/14/1995	6.250	5479
02/13/1995	5.750	3293
02/10/1995	6.250	1301
02/09/1995	6.125	195
02/08/1995	6.250	550
02/07/1995	6.250	72
02/06/1995	6.375	2692
02/03/1995	6.313	385
02/02/1995	6.281	2129
02/01/1995	6.313	4211
01/31/1995	6.250	2663
01/30/1995	6.188	399
01/27/1995	6.250	34
01/26/1995	6.063	87
01/25/1995	6.125	52
01/24/1995	6.000	279
01/23/1995	6.125	377
01/20/1995	6.250	335
01/19/1995	6.500	546
01/18/1995	6.750	498
01/17/1995	6.875	776
01/16/1995	6.750	101

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Date	Close	Volume (00s)
01/13/1995	6.875	135
01/12/1995	6.938	811
01/11/1995	6.875	1069
01/10/1995	7.125	1803
01/09/1995	6.875	121
01/06/1995	7.063	360
01/05/1995	7.000	333
01/04/1995	7.125	1156
01/03/1995	7.125	787
12/30/1994	7.250	1481
12/29/1994	6.938	1095
12/28/1994	6.500	1928
12/27/1994	6.250	1512
12/23/1994	6.000	104
12/22/1994	6.125	92
12/21/1994	6.000	640
12/20/1994	5.750	2252
12/19/1994	5.938	2324
12/16/1994	6.125	391
12/15/1994	6.000	2026
12/14/1994	6.000	1486
12/13/1994	6.125	64
12/12/1994	6.250	236
12/09/1994	6.375	1657
12/08/1994	6.500	1327
12/07/1994	6.500	4784
12/06/1994	6.250	358
12/05/1994	6.250	630
12/02/1994	6.313	368
12/01/1994	6.250	717

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Date	Close	Volume (00s)
11/30/1994	6.500	62
11/29/1994	6.250	292
11/28/1994	6.250	1190
11/25/1994	6.250	38
11/23/1994	6.250	3186
11/22/1994	6.375	2552
11/21/1994	6.375	7041

Data supplied by The Nasdaq Stock Market and University of Chicago, CRSP. Data may differ from data appearing in newspapers due to trades executed outside of normal market hours (9:30 am EST to 4:00 pm EST) or corrections reported after 4:00 pm EST. Close and Volume data adjusted for stock dividends/splits as of the *ex-dividend date*.

* Indicates the stock did not trade during normal market hours. Closing price is the average of the best Bid and Ask quotes at the end of the day; any volume figure is from trades executed outside of normal market hours.

** Indicates a SmallCap Market stock prior to 7/1/92. Prior to this date. The Nasdaq Stock Market did not report closing prices for the SmallCap Market closing price is the average of the best Bid and Ask quotes at the end of the day.

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EXHIBIT AA

51ST STORY of Level 2 printed in FULL format.

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February 24, 1998, Tuesday

SECTION: Financial News

DISTRIBUTION: TO MEDICAL AND BUSINESS EDITORS

LENGTH: 653 words

HEADLINE: Dura Pharmaceuticals Announces Accelerated Investment in Sales Force Expansion and Lower Than Expected Revenues and Earnings for 1998 Based on Recent Sales Results

DATELINE: SAN DIEGO, Feb. 24

BODY:

Dura Pharmaceuticals, Inc. (Nasdaq: DURA) today announced that based on recent sales results it will accelerate its planned investment in its sales force expansion and that it anticipates lower than expected revenues and earnings for 1998. The Company plans to begin expanding its sales force immediately from 270 representatives to over 450 by year-end in order to increase the market penetration Ceclor(R) CD (cefaclor extended release tablets), to prepare for the launch

of Albuterol Spiros(TM) and to support the growth of the Company's other promoted products. Based on an analysis of its current product mix, the Company estimates that the combined effect of the sales force expansion and revenue shortfall will reduce earnings by approximately $0.50 per share for 1998.

"The proactive expansion of our sales force at this time clearly serves the long-term interests of the Company and its shareholders," stated Cam L. Garner, Dura's Chairman, President and CEO. "Investing now in a significant sales and marketing effort to support the growth of Ceclor(R) CD and other promoted products, prior to our expected first Spiros(R) launch, improves the prospect of future revenue and earnings growth of the Company. In addition, the expansion is a key strategic initiative to support our planned launch of Albuterol Spiros(TM), pending FDA approval. This in turn is expected to position us to more effectively launch successor Spiros products currently in the development pipeline. Through our relationship with Spiros Development Corporation II, we believe that we may have access to as many as five new products within the next four years, all of which should be enhanced by the increased market penetration that an expanded sales force provides."

"On the acquisition front, we fully expect that our strengthened sales and marketing capability, coupled with our available cash balance of nearly $400 million, will better position the Company for product acquisitions and will likely accelerate the financial inroad of such acquisitions," noted Garner.

"This expansion initiative represents a transition in the Company's development. We are confident that Dura's sales and marketing organization and our Spiros(R) technology platform will be strengthened as a result of our current investment plan and we remain highly optimistic and committed to the successful execution of our strategy."

Dura Pharmaceuticals, Inc. is a San Diego based developer and marketer of prescription pharmaceutical products for the treatment of allergies, asthma, and related respiratory conditions. Dura has focused on the U.S. respiratory market because of its size and growth opportunities through two major strategies: (1) acquiring respiratory prescription pharmaceuticals and/or businesses developing or marketing such pharmaceuticals targeted at high-prescribing respiratory physicians, and (2) developing Spiros, a pulmonary drug delivery system.

Except for the historical and factual information contained herein, the matters discussed in this press release may contain forward-looking statements which involve risks and uncertainties, including market conditions, competitive products and pricing, seasonality, Dura's ability to add additional people to support activities, the timely development of the Spiros(TM) system, the timely receipt of FDA approval, if at all, Dura's limited manufacturing experience, dependency upon third parties and their successful development efforts and other risks detailed from time to time in the Company's filings with the SEC. Actual results may differ materially from those projected. Forward-looking statements represent the Company's judgment as of the date of this release. Dura disclaims,

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however, any intent or obligation to update any forward-looking statements.

SOURCE Dura Pharmaceuticals, Inc.

CONTACT: Cam Garner, Chairman, President and CEO of Dura Pharmaceuticals, Inc., 619-457-2553

LANGUAGE: ENGLISH

LOAD-DATE: February 25, 1998

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EXHIBIT AB

33RD STORY of Level 2 printed in FULL format.

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PR Newswire

November 4, 1998, Wednesday

SECTION: Financial News

DISTRIBUTION: TO BUSINESS AND MEDICAL EDITORS

LENGTH: 85.6 words

HEADLINE: Dura Pharmaceuticals and Spiros Development Corporation II Announce Receipt of FDA 12-Month Review Letter on Albuterol Spiros; Agency Requires Additional Information

DATELINE: SAN DIEGO, Nov 4

BODY:

Dura Pharmaceuticals, Inc. (Dura) (Nasdaq: DURA) and Spiros Development Corporation II, Inc. (Spiros Corp. II) (Nasdaq: SDCOZ) today announced the receipt of a complete response letter from the U.S. Food and Drug Administration (FDA) indicating that the Albuterol Spiros(TM) new drug application (NDA) is not approvable until certain deficiencies are addressed.

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The FDA has requested additional clinical trials on the to-be-marketed Spiros(R) inhaler in order to ensure inhaler reliability and replicate the clinical outcomes of the initial trials. The Agency has also requested the resolution of a number of chemistry, manufacturing and control issues. The letter raised no issues on the clinical data with the inhaler filed in the NDA demonstrating therapeutic comparability of Albuterol Spiros(TM) with Ventolin(R) (albuterol) MDI using standard lung function measures; however, issues were raised regarding electromechanical reliability. During the clinical trials, Dura made subsequent improvements which it believes has addressed these issues. A meeting with the FDA has been scheduled later this month to develop a mutually agreed upon plan to resolve the outstanding issues.

"Based on our current understanding of the FDA's response, we do not expect the launch of Albuterol Spiros(TM) in 1999," stated David Kabakoff, Ph.D., President of Dura Technologies and Chairman; President and CEO of Spiros Corp. II. "After further dialogue with FDA, we will be able to better estimate the schedule for the completion of the Albuterol Spiros(TM) development program. Since the filing of the NDA for Beclomethasone Spiros(TM) and further development of additional Spiros(R) respiratory products are contingent upon resolution of certain issues relating to Albuterol Spiros(TM), we expect that timelines for these products may be modified following further dialogue with the FDA."

"We remain confident in the Spiros(R) inhalation technology," said Cam L. Garner, Dura's Chairman and CEO. "We continue to believe that the Spiros(R) respiratory

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products under development will be significant contributors to the Dura product portfolio. It is important to note that Albuterol Spiros(TM) was not expected to contribute to earnings in 1999, so our previously communicated earnings expectations for that period remain unchanged. We are committed to realizing the full potential of this technology within and outside the field of respiratory care through both internal development and partnering agreements."

The Spiros(R) inhaler is designed to address limitations of other inhalation delivery systems, such as metered dose inhalers (MDIs) and other dry powder inhalers. In 1997, the U.S. market for inhaled asthma medications totaled nearly $2 billion, with MDIs representing the most common method of delivery. Most MDIs contain CFC propellants, which deplete the ozone layer and are subject to worldwide regulations aimed at eliminating their use. MDIs also generally require press-and-breathe coordination that many patients are unable to properly perform. Albuterol Spiros(TM) is being developed to compete in the established $700 million U.S. market for inhaled albuterol, the most frequently prescribed asthma medication worldwide.

Dura Pharmaceuticals, Inc. is a San Diego based developer and marketer of prescription pharmaceutical products for the treatment of allergies, asthma, and related respiratory conditions. Dura has focused on the U.S. respiratory market because of its size and growth opportunities through two major strategies: (1) acquiring respiratory prescription pharmaceuticals and/or businesses developing or marketing such pharmaceuticals targeted at high-prescribing respiratory physicians, and (2) developing Spiros(R), a pulmonary drug delivery system.

Appendix D

Spiros Development Corporation II, Inc. is a separate public company formed primarily to fund the continued development of Spiros(R), a proprietary pulmonary drug delivery system, and to conduct formulation work, clinical trials and commercialization for defined asthma drugs in the Spiros(R) Inhalation System.

Except for the historical and factual information contained herein, the matters discussed in this press release may contain forward-looking statements which involve risks and uncertainties, including market conditions, competitive products and pricing, seasonality, Dura's ability to add additional people to support activities, the timely development of the Spiros(R) system, the timely receipt of FDA approval, if at all, Dura's limited manufacturing experience, dependency upon third parties and their successful development efforts and other risks detailed from time to time in the Companies' filings with the SEC. Actual results may differ materially from those projected. Forward-looking statements represent the Companies' judgment as of the date of this release. Each of Dura and Spiros Development Corp. II disclaim, however, any intent or obligation to update any forward-looking statements. SOURCE Dura Pharmaceuticals, Inc.

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LANGUAGE: ENGLISH

LOAD-DATE: November 5, 1998

APPENDIX E — EXCERPT (PAGE 21) FROM MARCH 26, 2001 TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE M. JAMES LORENZ

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

CASE NO. 99CV01.51
SAN DIEGO, CA
MARCH 26, 2001
10:35 A.M.

BROUDO, ET AL,

PLAINTIFFS,

DURA PHARMACEUTICALS, ET AL,

DEFENDANTS.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE. M. JAMES LORENZ
WITHOUT A JURY

APPEARANCES:

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Appendix E

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[21] STOCK AT THE END OF THE CLASS PERIOD CAN BE PROBATIVE OF INFLATION DURING THE CLASS PERIOD, BUT IT'S NOT A REQUIREMENT THAT THE REASONS FOR THE DECLINE ON THE DAY IT'S ANNOUNCED TIE DIRECTLY TO THE REASONS THAT IT WAS INFLATED. ALL THAT IS REQUIRED IS THAT THE PLAINTIFFS ESTABLISH THAT THE DEFENDANTS' CONDUCT CAUSED THEIR LOSS.

THE COURT: IS THERE SOME CASE LAW YOU CAN POINT ME TO ON THAT?

MR. ROSEN: YES. THE NINTH CIRCUIT DECISION IN *KNAPP V. ERNST WHITNEY* -- WOULD YOU LIKE THE CITE ON THAT, YOUR HONOR?

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THE COURT: YES.

MR. ROSEN: 90 FED 3RD [43]. AND THE JUMP CITE IS 1438. THAT IS A '96 DECISION.

THE COURT: THANK YOU.

MR: ROSEN: SURE. AS TO THE CORROBORATING DETAIL THAT PLAINTIFFS HAVE PROVIDED HERE -- WHERE I WAS GOING WITH THAT IS THAT THE DETAILS REGARDING MEMOS. THE DETAILS REGARDING MEETINGS, THE DETAILS REGARDING THE CLINICAL RESULTS THAT HAVE ALL BEEN ADDED INTO THIS SECOND AMENDED COMPLAINT, WHICH REFLECT THE RESULTS OF OUR INVESTIGATION, ARE MORE THAN ENOUGH TO PROVIDE THIS COURT WITH A SATISFACTION THAT THE ALLEGATIONS IN THIS CASE ARE NOT BOILERPLATE, AND THAT THE PLAINTIFFS HAVE PROVIDED CORROBORATING DETAIL.

AGAIN, REFERRING TO THE IN RE CELL PATHWAYS DECISION.

APPENDIX F — EXCERPT FROM (PAGES 18-21) (SECTION IV.A.) OF PLAINTIFFS-APPELLANTS' OPENING BRIEF TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 01-57136

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

In re DURA PHARMACEUTICALS, INC. SECURITIES LITIGATION

MICHAEL BROUDO, et al. On Behalf of Themselves and All Others Similarly Situated,

Plaintiffs-Appellants,

vs.

DURA PHARMACEUTICALS, INC., et al.,

Defendants-Appellees.

Appeal From the United States District Court
for the Southern District of California
No. 98-CV-00151-MJL(NLS)
The Honorable M. James Lorenz

PLAINTIFFS-APPELLANTS' OPENING BRIEF

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Appendix F

VI. ARGUMENT

A. The District Court Erred in Requiring a Corrective Stock Price Movement to Successfully Plead "Loss Causation"

The district court held that plaintiffs did not properly plead loss causation, despite allegations "that the stock price on the date of purchase was inflated because of the [defendants'] misrepresentations or omissions and that [plaintiffs] would not have purchased the stock had they known about Defendants' wrongdoing." ER95:15. "These allegations are not sufficient to withstand a motion to dismiss," concluded the court, because plaintiffs had not shown a connection between defendants' Albuterol Spiros misrepresentations and a subsequent corrective stock-price decline at the Class Period's close. ER95:15.

The district court was wrong. Its holding contradicts Ninth Circuit precedent, which holds that plaintiffs "establish loss causation if they have shown that the price on the date of purchase was inflated because of the misrepresentation." *Knapp*, 90 F.3d at 1438; *accord Gray v. First Winthrop Corp.*, 82 F.3d 877, 886 (9th Cir. 1996). Plaintiffs here did so by pleading that defendants' misrepresentations and omissions inflated the price of the Dura stock that they purchased in reliance upon the integrity of the market, and were injured thereby. *See* ER72:¶¶37, 179.

Under this Circuit's law, the "loss" to plaintiffs for §10(b) purposes is paying more than the stock's "true value" at the moment of purchase – not if and when some "corrective

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statements" drive the price back down. *Wool v. Tandem Computers, Inc.*, 818 F.2d 1433, 1437 (9th Cir. 1987); *see also Green v. Occidental Petroleum Corp.*, 541 F.2d 1335, 1344 (9th Cir. 1976) (Sneed, J., concurring). The correct focus is on the stock's inflation at the moment of purchase – not on its price at some later time. *Wool*, 818 F.2d at 1437.

In a fraud-on-the-market case like this, loss causation and transaction causation are both inferred from the materiality of a misrepresentation or omission: "Materiality circumstantially establishes the reliance of some market traders and hence the inflation in the stock price – when the purchase is made the causational chain between defendants' conduct and plaintiff's loss is sufficiently established to make out a *prima facie* case." *Blackie v. Barrack*, 524 F.2d 891, 906 (9th Cir. 1975); *accord Basic Inc. v. Levinson*, 485 U.S. 224, 242-45 (1988). The action "is not predicated solely on a showing of economic damage (loss causation)," realized when the stock is purchased. *Blackie*, 524 F.3d at 906.

When plaintiffs point to a stock drop as the amount of the inflation, they may show loss causation by alleging that defendants' false and misleading statements led to a stock-price fall upon disclosure. *See, e.g., Provenz v. Miller*, 102 F.3d 1478, 1492 (9th Cir. 1996). They will have shown that the false and misleading statements """touch [] upon""" the reason's for the stock's decline in value. *Id.* (citation omitted). But a subsequent decline in price is not always required.

In *Blackie*, this Court rejected defendants' contention – similar to the district court's holding here – that the plaintiffs'

loss suffered at the time of purchase must be connected to a subsequent decline in the security's price:

> [Defendants] contend that the inflation paid must be measured by the change in price after a corrective release. That drop is of course circumstantial evidence of the inflation when purchased, but it is not the exclusive method of measuring inflation. The fact finder may rely on other methods of determining actual value on the date of purchase, including expert testimony on actual value .... In any event, the drop after a corrective disclosure will not be conclusive of the amount of original inflation.

524 F.2d at 909 n.25; *accord Wool*, 818 F.2d at 1437 & n.3; *Green*, 541 F.2d at 1346.

Similarly, in *Knapp*, this Court rejected defendants' "focus on the post-disclosure price ... as the true value of the stock." 90 F.3d at 1438. "Although the post-disclosure price may in some cases be evidence of the value of the stock before disclosure, the post-disclosure price is not a measure of pre-disclosure value." *Id.* Indeed, those investors who sell their inflated stock before corrective statements are made nonetheless "can suffer losses caused by the misrepresentation." *Id.* This Court flatly rejected defendants' arguments that "plaintiffs who both purchased and sold their stock before corrective statements had been made could not have established loss causation." *Id.* Corrective disclosures are not critical. *Id.*

Knapp cannot be reconciled with the district court's requirement that the Dura defendants make a corrective announcement concerning Albuterol Spiros at some time during the Class Period. Indeed, if the district court were correct, defendants could successfully insulate themselves from securities-fraud liability simply by refusing to ever "come clean" about their earlier falsehoods. This Court remarked upon this unsavory result in *Worlds of Wonder*, while reversing summary judgment in defendants' favor on §11 claims, because the district court ascribed to the "faulty premise" that defendants' falsehoods needed to be disclosed before liability could attach. *In re Worlds of Wonder Sec. Litig.*, 35 F.3d 1407, 1422 (9th Cir. 1994). If the premise were true, explained the Court, securities defendants could immunize themselves for fraudulent statements simply by refusing to correct the statements. *Id.*

The district court's view finds support in *Robbins v. Koger Props.*, 116 F.3d 1441 (11th Cir. 1997), where the Eleventh Circuit expressly rejects *Knapp*'s holding that plaintiffs establish loss causation "'if they have shown that the price on the date of purchase was inflated because of the misrepresentation.'" *Id.* at 1448 (quoting *Knapp*, 90 F.3d at 1438). Instead, says *Robbins*, the Eleventh Circuit's decisions "explicitly require proof of a causal connection between the misrepresentation and the investment's subsequent decline in value." *Id.* But in this Circuit, *Robbins* does not control – *Knapp* does.

The district court thought *Binder v. Gillespie*, 184 F.3d 1059 (9th Cir. 1999) and *McGonigle v. Combs*, 968 F.2d 810 (9th Cir. 1992), required that defendants' misstatements must

be linked up with a subsequent stock-price decline upon disclosure, ER95:14-15, but neither case is so rigid. *Binder* correctly recognizes that the "touches upon" requirement is "amorphous," and decides against plaintiff because there "was no showing of any material misrepresentation or omissions . . . that can be said to have caused any investor loss." 184 F.3d at 1066. That analysis is consistent with *Knapp*'s focus on alleged inflation on the dates of purchase due to defendants' misstatements. *McGonigle* does not support the district court's holding, either, for the plaintiffs there simply failed to present evidence suggesting that defendants' omissions affected the security's value. 968 F.2d at 820-21. It never required any additional "decline in price."

Finally, if plaintiffs were required to plead a stock drop upon a corrective disclosure, the district court should have permitted them to do so in an amended complaint. Defendants' own stock chart, submitted as part of their Request for Judicial Notice, shows a dramatic 20% stock-price drop immediately following Dura's November 3, 1998, announcement that the FDA rejected Albuterol Spiros. *See* ER79:Ex. L. If this Court decides that leave to amend is warranted, plaintiffs could add this allegation to their Complaint.

Because plaintiffs alleged that defendants' material misstatements concerning Albuterol Spiros inflated the price of Dura stock that they purchased, ER72:¶¶37, 179, they have successfully pleaded loss causation. The following section explains how those statements were false and made with scienter.